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# CANADIAN LABOR LAWS AND THE TREATY

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# CANADIAN LABOR LAWS AND THE TREATY

BY

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# PREFACE

It may be said that when Canada became a member of the International Labor Organization, Canadian labor legislation entered upon a new phase. The promotion of laws for the protection of the workers against the evils of industrialism, which before had been mainly the concern of the trade unions, became a matter of international obligation. This function at once assumed new dignity and importance. Labor legislation is now receiving attention in Canada as never before, and fortunately so, for it rests with Canadians at large whether their country will rank among the nations as a leader or a laggard in this field. If this outline of the growth of a considerable body of the labor law of Canada affords some background for the prevailing discussion, its main purpose will have been achieved.

The study traces to the end of 1925 the development of the legislation of Canada, Dominion and provincial, within the scope of the nine methods and principles of the Labor Section of the Treaty of Versailles, and endeavors to show in what degree it conforms to this new industrial *jus gentium*. To some readers the chapters on the nine principles of the Labor Section will appear unduly meticulous in their narration of changes in the statutes, but in this they may serve to emphasize the slow process by which competent legislation is attained. They show abundantly that an effective statute is not to be had "all complete like Minerva springing fully armed from the brain of Jupiter," as the *Canadian Manufacturer* said when a Dominion factories act was being considered in 1882. It is hoped, too, that this detailed treatment will relieve students of the subject from the necessity of consulting some hundreds of volumes of statutes.

As to the method of these chapters, each begins with a statement of the principle of the Labor Section with which it deals. This is followed, in order to show what further interpretation has been given the principle, by a summary of the draft conventions and recommendations on the subject adopted by the International Labor Conferences. An outline of the legislation is given next, the legislation of the competent authorities, Dominion or provincial, being treated in the order in which they gave attention to the subject. Each of these chapters concludes with a summarized statement of the development of the legislation. Readers impatient of the detailed treatment are referred to the summaries. Those interested in the text of the labor laws should consult the annual and quinquennial volumes on labor legislation issued by the Department of Labor of Canada since 1915.

It is impossible to mention by name the many who have contributed to this study. Professors Samuel McCune Lindsay and Robert L. Schuyler of Columbia University read the manuscript and made helpful suggestions for its improvement. Mr. Tom Moore, president of the Trades and Labor Congress of Canada, was kind enough to read and criticize Chapter V, and Mr. J. G. O'Donoghue, K.C., solicitor of the Congress, offered criticisms on Chapters II and V. Mr. W. C. Clark, Economist of S. W. Straus & Co., formerly of Queen's University, has contributed a number of valuable suggestions. The author has had the advantage of reading an excellent manuscript on the Canadian labor movement by Dr. H. A. Logan of Randolph-Macon Woman's College and of the use of the valuable library of the Department of Labor at Ottawa. He wishes especially to acknowledge his indebtedness to Mrs. Stewart for countless hours of assistance. In so detailed a study errors are bound to occur, and for these the author alone is responsible.

B. M. S.

EVANSTON, ILLINOIS.

# CONTENTS

PAGE

CHAPTER I

Canada and the International Labor Organization . . . . . 11

CHAPTER II

Dominion and Provincial Powers in Labor Legislation . . . . . 47

CHAPTER III

The Canadian Labor Movement and Labor Legislation . . . . . 66

CHAPTER IV

Labor not a Commodity . . . . . 113

CHAPTER V

Freedom of Association for Employers and Employed . . . . . 116

CHAPTER VI

A Wage Sufficient for Reasonable Living . . . . . 195

CHAPTER VII

A Work-Day of Eight Hours . . . . . 231

CHAPTER VIII

A Weekly Rest of at Least Twenty-four Hours . . . . . 268

CHAPTER IX

Abolition of Child Labor . . . . . 302

CHAPTER X

Equal Pay for Equal Work . . . . . 386

CHAPTER XI

Fair Treatment of the Alien . . . . . 389

PAGE

CHAPTER XII

Enforcement of Labor Laws . . . . . 411

CHAPTER XIII

Conclusion . . . . . 472

Bibliography . . . . . 488

Table of Cases Cited . . . . . 491

Index . . . . . 493

# CHAPTER I

## Canada and the International Labor Organization

"The nations of the world by the Peace Treaty have adopted principles which until now were but ideals. As Canada is just entering the stage of greatest development, we have an opportunity unique among the nations for growth in harmony with those new principles." (From the report of the Royal Commission on Industrial Relations, Canada, 1919.)

In beginning this study of the development of Canadian legislation in the fields covered by the nine methods and principles of the Labor Section of the Treaty of Versailles, it will be necessary to outline the Labor Section of the Treaty, to give the salient facts concerning the establishment of the International Labor Organization and to trace briefly its history, especially in its bearing on Canada. As the study proposes to show the extent to which Canadian labor legislation has conformed to the international standards adopted at Versailles, it will be essential to indicate the interpretation placed upon them by the draft conventions and recommendations of the International Labor Conferences.

The Covenant of the League of Nations pledged the signatory powers to the improvement of labor conditions by international regulation. Article 23 of the Covenant states:

> Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the League will endeavor to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations.

On January 25, 1919, the Peace Conference at Paris appointed a Commission on International Labor Legislation

to inquire into the conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment, and to recommend the form of a permanent agency to continue such inquiry and consideration in cooperation with and under the direction of the League of Nations.

The Commission prepared a plan for an International Labor Organization, based on a scheme submitted by the British delegates to the Conference, and suggested certain methods and principles for regulating labor conditions. The Labor Section of the Treaty (Part XIII, Articles 387-427) developed from the Commission's report. The opening paragraphs indicate the spirit in which the task was approached:

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity, as well as by the desire to secure the permanent peace of the world, agree to the following.

ORGANIZATION

The more important provisions governing the establishment and conduct of the International Labor Organization may be indicated by quotation and summary as follows:

Article 387. A permanent organization is hereby established for the promotion of the objects set forth in the preamble.

The original members of the League of Nations shall be the original members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization.

Article 388. The permanent organization shall consist of: (1) a general conference of representatives of the members and, (2) an International Labour Office controlled by the governing body described in Article 393.

Article 389 provides that a general conference of representatives of the members "shall be held from time to time as occasion may require, and at least once in every year," the conference to be "composed of four representatives of each of the members, of whom two shall be government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the members." Provision is made also for the appointment of advisers to the delegates, these to be allowed to speak in place of the delegates with whom they may be respectively associated. The non-government delegates are to be chosen "in agreement with the industrial organizations, if such organizations exist, which are most representative of em-

ployers or workpeople, as the case may be, in their respective countries."

Articles 390-92 give details of procedure at the conference, provide that the conference shall meet at the seat of the League of Nations, or elsewhere as decided by a two-thirds vote of conference delegates, and stipulate that the International Labor Organization shall be established at the seat of the League of Nations as part of the organization of the League.

Article 393 provides for the constitution of a governing body of twenty-four persons, twelve to represent the governments, six the employers and six the workers. It is provided that of the twelve persons representing the governments eight shall be nominated by the members of chief industrial importance, and four shall be nominated by the members selected for the purpose by the government delegates to the conference, excluding the delegates of the eight members mentioned above. The period of office of members of the governing body was fixed at three years.

Article 394 provides for the appointment of a director of the International Labor Office by the governing body and Article 395 for a staff. In outlining the functions of the International Labor Organization, Article 396 states they shall

include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the conference.

It will prepare the agenda for the meetings of the conference.

Articles 397 and 398 cover details of procedure, and with regard to expenses Article 399 states that

each of the members will pay the travelling and subsistence expenses of its delegates and their advisers and of its representatives attending the meetings of the conference or governing body, as the case may be.

All the other expenses of the International Labor Office and of the meetings of the conference or governing body shall be paid to the director by the secretary-general of the League of Nations out of the general funds of the League.[1]

Articles 400-404 provide that (a) the agenda for all meetings of the conference shall be settled by the governing body; (b) the director shall act as secretary of the conference " and shall transmit the agenda so as to reach the members four months before the meeting of the conference "; (c) governments of the members may formally object to the inclusion of any item or items in the agenda, such objections to be effective, however, only if sustained by a two-thirds majority of the votes cast by the delegates present at the conference; (d) the conference may regulate its own procedure, but voting is void " unless the total number of votes cast is equal to half the number of the delegates attending the conference "; and (e) technical experts may be added to any committees appointed.

The obligations and rights of members of the International Labor Organization with reference to the adoption and observance of its recommendations and draft conventions are set forth as follows:

Article 405. When the conference has decided on the adoption of proposals with regard to an item in the agenda, it will

[1] The first portion of this section has been interpreted by the governing body as requiring only that each member of the International Labor Organization who is for the time being elected to a seat on the governing body shall pay the expenses of the governmental representative on the governing body, the expenses of a representative of employers or workers to be paid directly from the funds of the International Labor Office.

rest with the conference to determine whether these proposals should take the form: (a) of a recommendation to be submitted to the members for consideration with a view to effect being given to it by national legislation or otherwise, or (b) of a draft international convention for ratification by the members.

In either case a majority of two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the conference.

In framing any recommendation or draft convention of general application the conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances, make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the president of the conference and of the director and shall be deposited with the secretary-general of the League of Nations. The secretary-general will communicate a certified copy of the recommendation or draft convention to each of the members.

Each of the members undertakes that it will, within the period of one year at most from the closing of the session of the conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action.

In the case of a recommendation, the members will inform the secretary-general of the action taken.

In the case of a draft convention, the member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the secretary-general and will take such

action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is taken, to make a recommendation effective or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the member.

In the case of a federal state, the power of which to enter into conventions on labor matters is subject to limitations, it shall be in the discretion of that government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this article with respect to recommendations shall apply in such case.

The above article shall be interpreted in accordance with the following principle:

In no case shall any member be asked or required, as a result of the adoption of any recommendation or draft convention by the conference, to lessen the protection afforded by its existing legislation to the workers concerned.

Article 411 states that any member has a right to file a complaint with the International Labor Office if not satisfied that any other member is securing the effective observance of a convention both have ratified. A commission of inquiry to consider the complaint and report thereon may be appointed by the governing body. The next three articles deal with the constitution and procedure of such a commission of inquiry.

Provision is made for reference of complaints to the Permanent Court of International Justice:

Article 415. The secretary-general of the League of Nations shall communicate the report of the commission of inquiry to each of the governments concerned in the complaint, and shall cause it to be published.

Each of these governments shall within one month inform the secretary-general of the League of Nations whether or not it

accepts the recommendations contained in the report of the commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

Article 416. In the event of any member failing to take the action required by Article 405, with regard to a recommendation or draft convention, any other member shall be entitled to refer the matter to the Permanent Court of International Justice.

Article 417. The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 415 or Article 416 shall be final.

Article 418. The Permanent Court of International Justice may affirm, vary, or reverse any of the findings or recommendations of the commission of inquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other governments would be justified in adopting against a defaulting government.

As to the treatment of defaulting governments, it is provided:

Article 419. In the event of any member failing to carry out within the time specified the recommendations, if any, contained in the report of the commission of inquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other member may take against that member the measures of an economic character indicated in the report of the commission or in the decision of the Court as appropriate to the case.

Article 420. The defaulting government may at any time inform the governing body that it has taken the steps necessary to comply with the recommendations of the commission of inquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the secretary-general of the League to constitute

a commission of inquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply, and if the report of the commission of inquiry or the decision of the Permanent Court of International Justice is in favor of the defaulting government, the other governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting government.

Articles 421-23 deal with the application of conventions to colonies, protectorates and possessions, and Articles 424-26 with the first International Labor Conference.

### GENERAL PRINCIPLES

Part II of the Labor Section enunciated certain methods and principles as international standards for the regulation of labor conditions. Sir Robert Borden, the Canadian Prime Minister of the day, had an honorable part in drafting and securing agreement upon these resolutions. This part of the Section reads:

Article 427. The High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

They recognize that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavor to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight-hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

### INTERNATIONAL LABOR CONFERENCES

Seven International Labor Conferences have been held under the provisions of Article 389. The first, which was convened at Washington, October 29, 1919, with delegates present from thirty-eight countries, considered questions bearing on four of the nine principles of the Labor Section—those dealing with the eight-hour day, child labor, equitable economic treatment for all workers lawfully resident in the country and factory inspection. The Conference adopted draft conventions on three principles of the Labor Section considered—the eight-hour day, abolition of child labor and equitable treatment of alien workers.

The draft convention on the eight-hour day defined the term " industrial undertaking " broadly to include every kind of mine, quarry, industrial establishment, construction and maintenance work, and transportation, but stipulated that the provisions relative to transport by sea and on inland waterways should be determined by a special conference, which was held the next year. The working hours of persons employed in any public or private industrial undertaking were limited to eight in the day and forty-eight in the week, with the exception that the provisions were not to apply to persons holding positions of supervision or management, nor to those employed in a confidential capacity. The daily hours of labor might be extended not more than one hour for the purpose of obtaining a shorter work-day on one or more days of the week. Employment in shift for longer hours was permitted if the average hours over a period of three weeks or less did not exceed eight in the day and forty-eight in the week.

In case of accident, actual or threatened, or of urgent work to be done to machinery or plant, or in case of *force majeure,* the limit of hours might be exceeded, but only when necessary to avoid serious interference with the ordi-

nary working of the undertaking. Provision was made for a maximum work-week of fifty-six hours in continuous industries, and for the regulation by public authorities of exceptions in the case of those whose work must necessarily be carried on outside the limits laid down for the general working of an establishment or whose work was essentially intermittent. Such regulations might be made only after consultation with the organizations of employers and workers concerned and the rate of pay for overtime could not be less than one and one-quarter times the regular rate. In order to insure against abuse of these exceptions, each government was required to communicate to the International Labor Office a list of processes deemed necessarily continuous, full information in regard to public regulations permitting exceptions and as to agreements between workers' and employers' associations which permitted more than eight hours' work in a day but not more than an average of forty-eight in a week. Certain modifications in the convention were made in the application to Japan, British India and a few other countries.

The convention on the age of admission of children to industrial undertakings fixed the minimum age at fourteen and required every employer to keep a register of all employees under sixteen years of age. Exemption was provided for work done by children in technical schools which were under public supervision and special provisions applied to Japan and India.

The convention regarding the night work of young persons prohibited the employment in industrial undertakings during the night (including the interval between 10 p. m. and 5 a. m.) of persons under the age of eighteen years except in the case of certain continuous industries, where persons over sixteen might be employed. Special provisions were made for coal mines, bakeries, industries in tropical

countries and cases of special emergency. In coal mines, young persons might be employed between 10 p. m. and 5 a. m. if there were an interval of fifteen hours, and in no case less than thirteen hours, between the periods of work. In bakeries where night work was prohibited for all workers, the night period might be between 9 p. m. and 4 a. m.

One of the parts of the convention on unemployment provided that members which ratified the convention and which had established systems of unemployment insurance should make arrangements whereby workers belonging to one member and working in the territory of another should be admitted to the same rates of benefit as native workers.

Of the six recommendations passed, one was within the scope of the eighth point on the equitable treatment of aliens. This recommendation suggested that each member of the International Labor Organization should, on condition of reciprocity and upon terms to be agreed between the countries concerned, admit the foreign workers (together with their families) employed within its territory to the benefit of its laws and regulations for the protection of its own workers and to the same right of lawful organization.

A recommendation concerning the protection of women and children against lead poisoning lay within the child-labor clause of the Labor Section, for it provided that women and young persons under eighteen, because of the danger to their physical development, should be excluded from employment in certain processes involving the use of lead and that their employment in processes involving the use of lead compounds should be permitted only under certain conditions.

Another recommendation related to inspection, the ninth point. This proposed that each member of the International Labor Organization that had not already done so should establish as soon as possible not only a system of

efficient factory inspection but also a government service especially charged with safeguarding the health of the workers.

The Conference also adopted conventions concerning the employment of women before and after childbirth and during the night, and recommendations on unemployment, the prevention of anthrax and the application of the Berne Convention of 1906 on the prohibition of the use of white phosphorus in the manufacture of matches.

At the second International Labor Conference—the Seamen's Conference—convened at Genoa, June 15, 1920, the child-labor and hours-of-work principles of the Labor Section of the Treaty received attention. The Conference adopted a convention fixing the minimum age for admission of children to employment at sea at fourteen years, the same agreed upon for children in industrial undertakings at the first Conference.

With regard to hours of work in inland navigation and in the fishing industry, the Conference recognized the difficulties arising from the fact that inland waterways are frequently boundaries between two countries. It was proposed in a recommendation, therefore, that an agreement should be entered into by nations having boundary waters so that their regulations should be uniform and should follow the general lines of the labor clauses of the Peace Treaty and the draft conventions adopted at the Conference. In the case of other countries, it was recommended that legislation should be enacted limiting hours of labor as far as possible in the direction of the convention adopted at the Washington Conference.

Another recommendation was to the effect that hours of work in the fishing industry should be limited in the direction of eight in a day and forty-eight in a week in so far as the conditions peculiar to the industry permit, and that

legislation enacted to this end should be framed after consultation with the organizations of employers and workers concerned.

The Conference adopted draft conventions for establishing facilities for finding employment for seamen and concerning unemployment indemnity in case of loss or foundering of the ship. Recommendations concerning unemployment insurance for seamen and the establishment of national seamen's codes were also adopted.

The agenda of the third Conference, held at Geneva, October 25 to November 19, 1921, carried topics within the scope of the child-labor, right of association and weekly-rest principles of the Labor Section. A draft convention relating to the employment of young persons on vessels as trimmers and stokers fixed the minimum age at eighteen except on ships of war, school or training ships or ships not propelled by steam. Young persons of sixteen might be employed in ports where only young persons of less than eighteen were available but the engagement of two such young persons in place of one trimmer or stoker was required. Young persons of sixteen might also be employed on vessels engaged exclusively in the coastal trade of India or Japan, if found physically fit. Shipmasters were required to keep a register of all persons under eighteen employed on their vessels, or a list of them in the articles of agreement. By another convention annual medical examinations were made compulsory for the employment of any children or young persons on vessels, excluding ships of war and those upon which only members of the same family were employed.

Employment in agriculture of young persons under fourteen years of age during hours fixed for school attendance was prohibited in another draft convention. An exception was made in the case of approved work done by children in

technical schools and it was also provided that for purposes of practical vocational instruction the hours of school attendance might be so arranged as to permit the employment of children on light agricultural work (and in particular on light work connected with the harvest), if the annual period of school attendance was not reduced below eight months.

Recommendations were passed regarding night work in agriculture, that each member of the International Labor Organization should so regulate night employment of children under fourteen years as to allow a rest period of at least ten consecutive hours and for young persons between fourteen and eighteen years of at least nine consecutive hours. In a similar recommendation as to women, nine hours of rest, to be consecutive if possible, were specified.

In a draft convention which provided, with certain exceptions, against the use of white lead in painting, the employment of males under eighteen and all females was prohibited in any painting work of an industrial character involving the use of white lead.

The rights of association and combination enjoyed by industrial workers were established for all agricultural wage-earners by another draft convention and laws and regulations which provided compensation for personal injury by accidents arising out of or in course of employment were extended to them.

A draft convention was adopted providing for a rest period of at least twenty-four consecutive hours in each week for all workers in industrial undertakings, subject to exceptions to be made by the government after consultation with organizations of employers and workers concerned, which should be reported to the International Labor Office. Where the rest periods were suspended or reduced, compensatory rest was to be provided as far as possible. A recommendation that similar provision should be made for employees of commercial establishments was adopted.

Further recommendations of the Conference dealt with special measures for the protection of agricultural workers—the development of technical education, the prevention of unemployment, the establishment of social insurance, the protection of women wage-earners before and after childbirth and living-in conditions of the workers.

The fourth session of the Conference, held at Geneva, October 18 to November 3, 1922, did not consider any topics within the scope of the Labor Section. The Conference proposed an amendment to Part XIII of the Treaty with a view to reforming the constitution of the governing body, passed a resolution regarding the periodicity of the Conference, adopted a proposal concerning the procedure of amendment to conventions and passed a recommendation regarding communication of emigration and immigration information to the International Labor Office.

The agenda of the fifth session, held at Geneva from October 22 to October 29, 1923, was devoted entirely to factory inspection, the ninth of the methods and principles of the Labor Section. The Conference agreed upon a recommendation concerning "General principles for the organization of systems of inspection." With regard to the spheres of inspection, it was recommended that it should be the principal function of the system to secure the enforcement of the laws and regulations relating to the conditions of work and the protection of the workers while employed and that in so far as additional duties might be assigned, they should not be permitted to interfere with the main duties of inspection, that they should be closely related to the primary objects of inspection, and that they should not prejudice the authority and impartiality of the inspectors.

As to the nature of the functions and powers of inspectors, it was recommended:

That inspectors provided with credentials should be empowered by law:

(a) to visit and inspect, at any hour of the day or night, places where they may have reasonable cause to believe that persons under the protection of the law are employed, and to enter by day any place which they may have reasonable cause to believe to be an establishment, or part thereof, subject to their supervision; provided that, before leaving, inspectors should, if possible, notify the employer or some representative of the employer of their visit;

(b) to question, without witnesses, the staff belonging to the establishment, and, for the purpose of carrying out their duties, to apply for information to any other persons whose evidence they may consider necessary, and to require to be shown any registers or documents which the laws regulating conditions of work require to be kept.

The recommendation also held that inspectors should be bound by oath not to disclose manufacturing secrets, that they should be empowered to bring breaches of the laws directly before the competent judicial authority and that when it was not incompatible with the system and principles of law of the country, the inspectors' reports should be considered to establish the facts stated, in default of proof to the contrary. It was recommended that inspectors should be empowered, in cases where immediate action was necessary, to make an order or, if necessary by the law of the country, to apply to the competent authorities for an order to require necessary alterations to plant within a fixed time, and that in countries where the inspector's order has executive force, suspension of its execution should be only by appeal to a higher authority and should never prejudice the taking of measures for the prevention of imminent danger duly shown to exist.

On the subject of safety it was held that inspection "should be increasingly directed towards securing the adop-

tion of the most suitable safety methods for preventing accidents and diseases" and the following methods were recommended:

(1) that all accidents should be notified to the competent authorities and that one of the essential duties of the inspectors should be to investigate accidents, and more especially those of a serious or recurring character, with a view to ascertaining by what measures they can be prevented;

(2) that inspectors should inform and advise employers respecting the best standards of health and safety;

(3) that inspectors should encourage the collaboration of employers, managing staff and workers for the promotion of personal caution, safety methods, and the perfecting of safety equipment;

(4) that inspectors should endeavor to promote the improvement and perfecting of measures of health and safety, by the systematic study of technical methods for the internal equipment of undertakings, by special investigations into problems of health and safety, and by any other means;

(5) that in countries where it is considered preferable to have a special organization for accident insurance and prevention completely independent of the inspectorate, the special officers of such organizations should be guided by the foregoing principles.

The recommendations with regard to "Organization of Inspection" may be summarized as follows: (1) inspectors should be localized in the industrial districts; (2) inspectors of the district should be placed under the supervision of an inspector of high qualifications and experience; supervising inspectors should meet for conference from time to time; (3) the inspectorate should be placed under the direct and exclusive control of a central state authority; (4) experts with scientific training should be employed by the State for dealing with processes involving the use of dangerous mate-

rials, the removal of injurious dust and gases, the use of electrical plant, and other matters; (5) the inspectorate should include women as well as men inspectors and women inspectors should in general have the same powers, duties and authority as the men inspectors and should have equal opportunity of promotion.

The following recommendations were made on the subject of qualifications and training of inspectors: (1) inspectors should possess a high standard of technical training and experience, should be persons of good general education, and by their character and abilities be capable of acquiring the confidence of all parties; (2) the inspectorate should be on a permanent basis and should be independent of changes of government. The inspectors should be given such a status and standard of remuneration as to secure their freedom from improper influences and they should be prohibited from having any interest in any establishment placed under their inspection; (3) on appointment inspectors should undergo a period of probation; and (4) inspectors should be transferred from district to district, especially if the industries of the country are of a varied character, so that they may obtain a full experience.

The recommendations on standards and methods of inspection may be summarized as follows: (1) the principle should be laid down that the employer and his officials are responsible for the observance of the law and are liable to be proceeded against without warning from the inspector. As a general rule, the visits of the inspectors should be made without previous notice to the employer. It is desirable that the State should take such measures as requiring the employer to post in his establishment an abstract of the requirements of the law so that all concerned may be acquainted with its provisions; (2) as far as possible there should be a general inspection of every establishment not less fre-

quently than once a year in addition to any special visits, and large establishments and those where conditions are unsatisfactory or dangerous should be visited much more frequently. When an irregularity has been discovered, the plant should be revisited at an early date.

With regard to cooperation of employers and workers, it was recommended that: (1) workers and their representatives should have every facility for communicating with inspectors as to any irregularity in the plant. The inspector should investigate every such complaint promptly but should keep it confidential and should give the employer no information that the visit was in consequence of the receipt of a complaint; (2) the inspectorate should confer from time to time with the representatives of the employers' and workers' organizations as to the best means of promoting a high standard in regard to the conditions affecting the health and safety of the workers.

The section on inspectors' reports reads as follows:

21. That inspectors should regularly submit to their central authority reports framed on uniform lines dealing with their work and its results, and that the said authority should publish an annual report as soon as possible and in any case within one year after the end of the year to which it relates, containing a general survey of the information furnished by the inspectors; that the calendar year should be uniformly adopted for these reports.

22. That the annual general report should contain a list of the laws and regulations relating to conditions of work made during the year which it covers.

23. That this annual report should also give the statistical tables necessary in order to provide all information on the organization and work of the inspectorate and on the results obtained. The information supplied should as far as possible state:

(a) The strength and organization of the staff of the inspectorate;

(b) The number of establishments covered by the laws and regulations, classified by industries and indicating the number of workers employed (men, women, young persons, children);

(c) The number of visits of inspection made for each class of establishment with an indication of the number of workers employed in the establishments inspected (the number of workers being taken to be the number employed at the time of the first visit of the year), and the number of establishments inspected more than once during the year;

(d) The number and nature of breaches of the laws and regulations brought before the competent authorities and the number and nature of the convictions by the competent authority.

(e) The number, nature and the cause of accidents and occupational diseases notified, tabulated according to class of establishment.

The sixth session of the International Labor Conference was held at Geneva, June 16 to July 5, 1924. A draft convention and a recommendation concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents were provisionally adopted, final action to be taken at the 1925 Conference. A similar course was followed on a draft convention concerning the weekly suspension of work for twenty-four hours in glass-manufacturing processes where tank furnaces are used and on a draft convention on night work in bakeries. The Conference, however, adopted a draft recommendation on facilities for the utilization of workers' spare time, supplementing the convention adopted at the Washington Conference on the eight-hour day, which aimed to secure for workers an adequate period of spare time. This recommendation covered a wide field, dealing with the preservation of spare time—spare time and social hygiene, housing policy, institutions for the utilization of spare time, and free use of institutions and coordination of local action. A resolution of the Conference invited the International Labor Office to

publish regularly studies of the action taken and results obtained in different countries in the application of measures directed toward the proper use of workers' spare time.

At the seventh session, convened at Geneva, May 19 to June 10, 1925, conventions and recommendations were adopted on four subjects, one of them having reference to hours of work and another being the clause of the Labor Section favoring equality of treatment for foreign workers. The draft convention forbidding night work in bakeries for a period of seven hours, which had been held over from the Conference of the previous year, was adopted, but the proposed draft convention providing for weekly suspension of work in glass-manufacturing processes where tank furnaces are used, passed provisionally in 1924, failed of adoption.

The Conference also accepted the draft convention and the recommendation concerning equality of treatment for national and foreign workers as regards workmen's compensation, which had been provisionally adopted at the preceding session. The convention provided that each State should grant to the nationals of any other State ratifying the convention the same treatment with regard to workmen's compensation as it granted its own nationals, without any condition as to residence. It permitted special agreements to provide that compensation for accidents occurring to workers while temporarily or intermittently employed in the territory of one member on behalf of an undertaking situated in the territory of another member should be governed by the laws and regulations of the latter member. Members who ratified the convention and who did not possess a system of workmen's compensation agreed to institute such a system within three years from the date of their ratification. The recommendation on the subject dealt with procedure necessary to facilitate the application of the convention. Such privileges as exemptions from taxes granted by any

member for purposes connected with workmen's compensation should be extended to the nationals of other members who should have ratified the convention and countries with no systems of workmen's compensation should afford facilities to alien workers to enable them to benefit by the laws on workmen's compensation in their own countries.

A draft convention and two recommendations on workmen's compensation were passed, setting forth the minimum scale of compensation and service to be accorded injured workers and concerning jurisdiction in disputes, suggesting they should be dealt with by a special court or board of arbitration on which employers and workers should have equal representation and that when ordinary courts of law dealt with such disputes they should be required, at the request of either party, to hear employers' and workmen's representatives. The subject of workmen's compensation for occupational diseases was also treated in a convention and recommendation.

These conventions and recommendations interpreting the labor clauses have been summarized at the beginning of each of the chapters dealing with the nine methods and principles.

### CANADIAN RATIFICATIONS

In regard to Canada's fulfilment of her obligations under the Labor Section of the Treaty it must be remembered that as a federal country she has peculiar difficulties in this regard. On this point the Treaty of Peace stated in Article 405, paragraph nine, that:

> In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this article with respect to recommendations shall apply in such case.

And in the same article it was stated that "in the case of a recommendation, the members will inform the secretary-general of the action taken."

It must be remembered also that the United States, Canada's chief competitor and accordingly the country whose action in labor legislation gives her most concern, is not a member of the International Labor Organization.

When the text of these draft conventions and recommendations of the Washington Conference was communicated through the League of Nations to the Government of Canada a question arose as to the division of responsibility between the Dominion and the provinces in these matters, a subject which is considered in the following chapter. It was finally decided,[1] on report of the Minister of Justice, that the Federal Government's obligation would be fully carried out if the different conventions and recommendations were brought to the attention of the competent authority, Dominion or provincial, in each case. Accordingly the Dominion Government's procedure on receiving these proposals has been to secure an opinion from the Minister of Justice as to the competent authority to deal with them and to transmit those held within provincial competence to the lieutenant-governors of the provinces.

In September, 1922, the Dominion Government called the provincial governments to a conference "to consider the problem of unemployment as well as aspects of other industrial and social questions which have been the subject of action at the International Labour Conference." The conference commended the draft conventions and recommendations to the sympathetic attention of the competent authorities and suggested that at the request of a majority of the provinces the Dominion Government should "call a confer-

[1] *Cf. infra*, p. 57.

ence for the consideration of any aspects of the matters when this may be deemed necessary." Pursuant to this resolution another federal-provincial conference was held in September, 1923. This conference adopted a number of recommendations on various proposals of the International Labor Organization, and the next year the legislatures of Saskatchewan and Nova Scotia endorsed certain of the decisions.

On the conventions and recommendations of the last four Conferences Canada has taken no formal action. Attention has been given only to certain of the decisions of the first three meetings of the International Labor Organization. At the Washington Conference six conventions and six recommendations were adopted, the first limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week.

British Columbia passed a series of measures at the first session of the legislature in 1921 to give effect to the Washington conventions, among them the Hours of Work Act (c. 22) which, subject to certain exceptions, limited the hours of persons employed in industrial undertakings to eight in the day and forty-eight in the week, but these acts were not to come into force until the enactment of similar legislation in the other provinces. A bill introduced during the second session proposed to make this act operative in 1922 but it was not passed. In 1923 (c. 22) an Hours of Work Act, effective January 1, 1925, established a working day of eight hours and a week of forty-eight hours in the industries of the province except the agricultural, horticultural and dairying industries. Persons employed in supervisory or confidential capacities were excepted. The law meets the requirements of the convention.

The Legislature of Ontario passed the following resolution on the subject:

Resolved, that in the judgment of this House, as a general principle and subject to reasonable exceptions, including farm labour, the working hours of persons employed in public and private industrial undertakings ought not to exceed eight hours in the day and forty-eight in the week, but we recognize that until such eight-hour day becomes of general application its adoption in Ontario would make this province the victim of unfair competition from such countries as have not an eight-hour law in force.

Mines acts in Alberta, British Columbia, Ontario, Nova Scotia and the Yukon have provided for an eight-hour day in mines, and the Yukon has enacted legislation for an eight-hour day on public works. British Columbia has a law applying the eight-hour day to workers about smelters and coke-ovens. The Alberta Factories Act limits the hours of workers on night shift to eight.

The second convention concerned the employment of women before and after childbirth. British Columbia has given effect to this by the Maternity Protection Act, passed at the first session of the British Columbia legislature in 1921 (c. 37), which forbade the employment of any woman in any industrial or commercial undertaking during the six weeks following her confinement. It permitted her, on presentation of a medical certificate, to leave work six weeks prior to the probable date of confinement and prohibited the employer from dismissing her during the absence. As originally passed this measure was to come into effect concurrently with similar legislation in the other provinces, but an amending act was passed at the second session of 1921 (c. 31) which brought the measure into force January 1, 1922. The act made no provision for benefits as required by the convention. No other province has legislation on this subject.

Manitoba passed a resolution during the session of 1923,

intended to prepare the way for giving effect to the draft convention on maternity. During the session of 1924 the provincial government announced that "an investigation had been made as required by the resolution and that the Bureau of Labour had reported that cases of mothers being employed in industry shortly before or after childbirth were so rare in Manitoba that no action at the present time was deemed necessary."

The convention concerning the employment of women during the night has received attention in three provinces. In 1921 (c. 46) British Columbia passed the Night Employment of Women Act, which prohibited the employment of women in any industrial undertaking (agriculture, horticulture and dairying excepted) between 8 p. m. and 7 a. m. This act will come into force when similar legislation has been passed by the other provinces. The legislatures of Saskatchewan and Nova Scotia in 1924 endorsed the convention in resolutions passed March 19 and April 30 respectively. While no action has been taken in the remaining provinces all the mines acts except that of Nova Scotia prohibit all employment of female workers; Alberta, Ontario and Saskatchewan prohibit night work for women in factories, shops and office buildings; Quebec in factories and British Columbia, Manitoba, New Brunswick and Nova Scotia during the periods of exemption (except for twenty days during the canning season in Nova Scotia).

Among the measures passed by British Columbia in 1921, to come into force concurrently with similar acts in other provinces, was an Employment of Children Act (c. 19), designed to give effect to the convention fixing at fourteen the minimum age for admission of children to industrial employment. This act fixed the minimum age for employment of children in industrial undertakings (agriculture, horticulture and dairying excepted) at fourteen for boys and fifteen

for girls. This convention was endorsed by the Saskatchewan and Nova Scotia legislatures at their 1924 sessions. The factory, shops and mining laws of several of the provinces meet the age requirements of the convention and the majority of the school attendance laws require attendance to the age of fourteen.[1]

The convention concerning night work of young persons in industry was the basis for the Night Employment of Young Persons Act, passed by British Columbia in 1921 (c. 47). This act also contained the provision that it was to come into effect concurrently with like legislation in other provinces. It prohibited the employment of young persons under eighteen years of age in any industrial undertaking (except the agricultural, horticultural and dairying industries) between 8 p. m. and 7 a. m. Manitoba gave effect to the convention in 1924 (c. 7) by amending its Child Welfare Act. The provision which made unlawful the habitual employment of children under fourteen between 9 p. m. and 6 a. m. was extended to apply to children under eighteen years. Here again the majority of the provinces have enacted laws which establish the standards required by the convention.[2]

The principal object of the convention concerning unemployment was the establishment of a national system of free public employment agencies under the control of a central authority. While Canada has not ratified this convention, the Employment Service of Canada was established under the Employment Offices Coordination Act of 1918 (c. 21). This meets the requirement of free public employment agencies and provides a vehicle for the carrying out of another, the exchange of information on unemployment between the members of the International Labor Organization.

[1] *Cf. infra*, p. 356 *et seq.*

[2] *Cf. infra*, p. 384.

Canada has no legislation on unemployment insurance and no action has been taken on this section of the convention.

With reference to the recommendation on unemployment, Saskatchewan and Nova Scotia have taken action, the 1924 sessions of the legislatures of these provinces having endorsed two of the four clauses of this recommendation—the prohibition of fee-charging employment agencies or their operation only under government license with abolition to be achieved as soon as possible, and the reserving of public work for periods of unemployment. These two provinces have forbidden the operation of private empioyment agencies as have Alberta, British Columbia and Manitoba, and in Ontario and Quebec they may be operated only under license. Quebec has a provision that the Lieutenant-Governor may order the closing of private agencies but such order has not been made. The regulation of employment by a well-planned distribution of government orders has been endorsed by the Employment Service Council of Canada and an order-in-council of October 4, 1921, provides for cooperation between the Department of Labor and the Department of Railways and Canals in the placing of orders for equipment for the Canadian National Railways.

In conformity with the recommendation that arrangements for the disinfection of wool infected with anthrax spores should be made either in the country exporting such wool or at the port of entry, an order-in-council was passed by the Dominion Government on August 12, 1920, approving regulations under the Animal Contagious Diseases Act, requiring foreign exporters to furnish certificates as to the cleanliness and freedom from infection of wool and hair destined for Canada. The forms of these certificates were further amended by an order-in-council of February 21, 1921, in order to render them more explicit.

Concerning the application of the Berne Convention of

1906 on the prohibition of the use of white phosphorus in the manufacture of matches, the Parliament of Canada, before the war, passed legislation upon the subject-matter of this recommendation. An act of 1914 (c. 12) prohibited the manufacture, importation and sale of matches made with white phosphorus, and Canada has adhered to the Berne Convention since the provisions of the law came into effect.

No formal action has been taken by the Dominion or provincial governments on the other three recommendations of the Washington Conference—the protection of women and children against lead-poisoning, reciprocity of treatment for foreign workers and the establishment of government health services. As to the first, the factory legislation of seven of the provinces establishes safeguards for the protection of women and children in occupations deemed dangerous or unwholesome, and Quebec includes white lead in its list of dangerous establishments.[1] The Department of Justice considered that the recommendation concerning reciprocity of treatment of foreign workers required agreements with other members of the International Labor Organization, but none have as yet been made. In Canada legislation on health services is confined to the Dominion Public Health Act and the health acts of the various provinces, which have in view the general public health rather than any special provision for workpeople. However, the provincial public health acts do make provision for the inspection of manufacturing plants, stores and construction and logging camps with a view to their proper ventilation, cleaning and sanitation and the prevention and control of communicable diseases. The Dominion Government also has legislation for the safeguarding of the health of employees on public works in remote regions. The opinion of the Department of Justice referred to stated

[1] *Cf. infra*, p. 325.

that the establishment of health services was receiving attention in the Department of Health.[1]

Of the three conventions and four recommendations of the Genoa Conference the Department of Justice decided that all were within Dominion jurisdiction except the recommendation as to hours of work in the fishing industry.[2] At the session of 1924 (c. 12) the Dominion Government amended the Canada Shipping Act to give effect to the convention fixing fourteen as the minimum age for admission of children to employment at sea. A proclamation was issued on October 10, 1925, giving effect to this act as from January 1, 1926. The convention providing unemployment indemnity in case of loss or foundering of the ship was also included in this legislation.

With regard to the convention on establishing of facilities for finding employment for seamen, the Dominion Government is of the opinion that the machinery of the Employment Offices Coordination Act may be utilized for this purpose.

No attention has been given to the four recommendations. There is no provision in Canadian legislation for unemployment insurance for seamen, for limiting the hours in inland navigation and the fishing industry, and the establishment of a national seamen's code would involve the consolidation of the provisions in several laws affecting seamen.[3]

At the 1921 Conference seven conventions and eight recommendations were passed. The conventions fixing the minimum age for the employment of young persons as trimmers and stokers on vessels and requiring compulsory medical examinations for children and young persons employed at sea were included in the amendments to the Canada Shipping Act passed in 1924 by the Dominion Parliament.

[1] *Labour Gazette* (Ottawa), vol. xxi, p. 778.

[2] *Ibid.*, pp. 779-81.

[3] *Ibid.*, p. 780.

With regard to the convention concerning the rights of association and combination of agricultural workers, an order-in-council of June 27, 1922, stated:

> Agricultural workers, as far as existing Dominion legislation is concerned, would seem to have the same rights of association and combination as other workers. These rights are subject to a limitation or restriction only at the point where their exercise involves a contravention of the provisions of the Criminal Code. Probably these rights of association and combination do not extend to agricultural workers in the service of the Crown as represented by the Dominion.

Saskatchewan and Nova Scotia endorsed this convention in 1924.

The convention providing that children under fourteen should not be employed in agriculture except outside the hours fixed for school attendance was endorsed by Saskatchewan and Nova Scotia in 1924. Several of the provinces grant exemption from school attendance for urgent work in agriculture.

No action has been taken on the two other conventions passed in 1921. None of the compensation acts apply to agriculture, and none of the provinces have legislation prohibiting the use of white lead in painting and the excluding of males under eighteen and all females from painting work of an industrial character involving the use of white lead.

While no formal ratification has been made as to the convention concerning the application of the weekly rest in industrial undertakings and the recommendation concerning one in commercial establishments, the Dominion Lord's Day Act (R. S. C. 1906, c. 153) requires Sunday to be observed throughout the Dominion as a day of rest and several of the provinces have Sunday rest legislation which was not superseded by the Lord's Day Act.

The recommendation concerning the development of technical agricultural education was endorsed by Nova Scotia and Saskatchewan in 1924. Under the provisions of the Agricultural Instruction Act of 1913 (c. 5) the Dominion Government for ten years made an annual grant to the provinces for the purpose of aiding and advancing the farming industry by instruction in agriculture, but the act has not been renewed. The Dominion Department of Labor lists the following provincial legislation on the subject—" Agricultural Instruction and Technical Education Acts of Canada; the Vocational Education Acts of Prince Edward Island, New Brunswick and Ontario; the Technical Schools and the Agricultural and Dairy School Acts of Quebec; the School Grants Act of Alberta; the Industrial Education Act of Ontario; and the Schools Act of Saskatchewan."

Nova Scotia and Saskatchewan in 1924 endorsed the first, second, fourth and fifth sections of the recommendation concerning the prevention of unemployment in agriculture—(1) bringing more land into cultivation by modern technical methods, (2) encouragement of improved systems of cultivation, . . . (4) transport facilities for unemployed agricultural workers, and (5) developing supplementary employment for agricultural workers. There is no legislation on any of these subjects but on the third section, calling for the provision of facilities for settlement on the land, the Dominion and several of the provinces have land settlement schemes which are now being coordinated under the Dominion Department of Immigration. The provincial legislation to encourage farmers' cooperation and for the issue of government credit to farmers is not designed to aid agricultural workers, as called for in the sixth section of the recommendation. There is no legislation on the remaining recommendations of the 1921 Conference.

No action on any of the conventions or recommendations

of the last four Conferences has been taken in Canada but it should be noted with reference to the recommendation of the 1923 Conference as to the general principles for the organization of systems of factory inspection that all of the provinces except Prince Edward Island have enacted factory legislation which provides for inspection. Further, under the Immigration Act provisions can be made for the communication of information to the International Labor Office regarding emigration and immigration, as called for by the recommendation of the 1922 Conference. The recommendation of the 1924 Conference with reference to the utilization of workers' spare time involves a number of subjects which have received attention from the provincial legislatures.

With regard to the conventions and recommendations of the 1925 Conference on workmen's compensation for accidents and occupational diseases, all of the provinces with the exception of Prince Edward Island have workmen's compensation acts and six of the provinces — Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario—list among the compensable industrial diseases those resulting from mercury and lead poisonings and anthrax infection, as set forth in the convention.

Equality of treatment for national and foreign workers under workmen's compensation was treated in a convention and a recommendation. Saskatchewan alone among the provinces has not included in its Workmen's Compensation Act specific provisions discriminating against the dependents of deceased workmen residing outside the province.

As to the jurisdiction in disputes on workmen's compensation, the majority of the Canadian provinces have established workmen's compensation boards. These bodies are the final authority in the administration of compensation legislation, and in most cases employers' and workers' organizations are represented in the personnel of the boards.

The recommendation concerning the minimum scale of workmen's compensation provides, among other things, that the minimum scale of compensation for permanent total incapacity shall be a periodical payment equivalent to two-thirds of the workmen's annual earnings. Ontario and Manitoba have already established this standard, while in Alberta and British Columbia sixty-two and one-half per cent has been fixed.

This brings the record of Canada's relationship with the International Labor Organization to the end of 1925. Canada has had an important place in its councils. At the outset she was granted a government representative on the governing body and in 1922 she was given a seat as one of the nations of chief industrial importance. In addition, at the elections of that year she secured a workers' seat and a substitute employers' seat. Dr. W. A. Riddell, Deputy Minister of Labor for Ontario, was appointed chief of the agricultural service of the International Labor Office, resigning in 1925 to become advisor to the Canadian Government at the League of Nations. It seems inevitable that this active participation in the work of the International Labor Organization will hasten the development of labor legislation in Canada.

# CHAPTER II

## Dominion and Provincial Powers in Labor Legislation

"Untried in war, Canada stood high among the nations in the organization of her armies. I pray that in the organization of peace activities her effort will not be less worthy nor less outstanding." (From Sir Robert Borden's message to the National Industrial Conference, September 15, 1919.)

The division of authority between the Dominion and the provinces in matters affecting labor has been the subject of much discussion. According to the British North America Act, Canada's written constitution, passed by the Imperial Parliament in 1867, the Dominion Parliament is empowered "to make Laws for the Peace, Order, and Good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." While this introductory clause of Section 91 gives the Dominion this general authority, certain definite powers are also specified—the regulation of trade and commerce, the raising of money by any mode or system of taxation, navigation and shipping, seacoast and inland fisheries, naturalization and aliens, the criminal law, except the constitution of courts of criminal jurisdiction and "such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." A final clause indicates that any matter within these specified Dominion powers shall not be considered of a local or private nature and within the subjects assigned exclusively to the provinces.

Section 92 of the act assigns to the provincial legislatures property and civil rights in the province and "generally all Matters of a merely local and private Nature in the Province." Legislation respecting education is vested in the provinces by Section 93.

It was thought at first that the federal government could regulate labor conditions through its control of the criminal law. In 1883 [1] and 1884 [2] Sir Leonard Tilley introduced in the House of Commons an elaborate factory act under the title, "A bill to define certain offences against persons employed in factories." At the sessions of 1885 [3] and 1886 [4] Dr. Darby Bergin introduced a bill "to regulate the employment of children and young persons and women in the workshops, mills and factories of the Dominion of Canada." But in the meantime the Ontario Government passed, in 1884, a factory act which was in effect a replica of the proposed federal act with the addition of some clauses of the English factories law. Quebec followed with a similar measure in 1885.

At the end of the decade the question of jurisdiction was still in doubt. The Royal Commission on the Relations of Labor and Capital, reporting in 1889, said, "Your Commissioners cannot venture to determine where, in legislation affecting labor and capital, the authority of the Dominion Parliament ends and that of the Provincial Legislatures begins." [5] And again, "We would strongly urge the desirability of a Dominion Factory Act, wherein uniformity of laws can be obtained. If there be a doubt as to the powers of the Federal Government in the premises there

[1] *Hansard*, 1883, pp. 827, 1386.

[2] *Ibid.*, 1884, pp. 524, 1627.

[3] *Ibid.*, 1885, pp. 29, 362, 873 *et seq.*

[4] *Ibid.*, 1886, p. 946.

[5] *Report of the Royal Commission on the Relations of Labor and Capital in Canada* (Ottawa, 1889), p. 7.

ought to be a way provided for removing that doubt." [1] The commissioners were of the view that the competition between municipalities to secure new industries, the lack of uniformity in enforcement and the expense of enforcement for the smaller provinces argued for a Dominion law.[2] They said, " The protection which is given to manufacturers against outside competition proceeds from the Federal Government, and is enjoyed by all in common, and equally all should be placed on the same footing in the matter of restrictions." [3]

The secretary of the Ontario Manufacturers' Association also favored a federal factory act and stated in his report of 1885, " Should the authority ultimately be found to rest with the provincial governments, it would be a matter to be regretted as varying legislation by which the manufacturers of one province might be given an advantage over another, would be disastrous to business." [4] The Trades and Labor Congress of 1887 also was unanimously in favor of a Dominion factories act. The Congress resolved:

That inasmuch as the passage and enforcement of more stringent laws for the regulation of factories in some Provinces than in others is calculated to prejudicially affect the manufacturers of the Province having the stricter laws, it is desirable that the Dominion Parliament shall pass a Factory Act which shall apply to the whole Dominion. Should it be found that under the terms of the British North America Act such legislation is not within the jurisdiction of the Dominion Parliament, steps should be taken to amend the Constitution in that respect.[5]

A similar resolution was adopted in 1890.[6]

[1] *Royal Commission on the Relations of Labor and Capital, op. cit.*, p. 89.

[2] *Ibid.*, p. 89.

[3] *Ibid.*, p. 89.

[4] *Canadian Manufacturer*, February 6, 1885, p. 939.

[5] *Report of the Proceedings of the Trades and Labor Congress of Canada*, 1887, p. 40.

[6] *Ibid.*, 1890, p. 26.

The Royal Commission on the Relations of Labor and Capital reported with regard to a Dominion law that, "The feeling in its favor is general; it has been frequently and strongly expressed, and the working classes are confidently looking forward with the hope that in the not far distant future their wishes will be met." [1] We cannot say what consideration the government gave to this point of view, but the Ontario act of 1884 and the Quebec law of 1885 were left in possession of the field.

As late as 1895 the Commissioner appointed by the Dominion Government to enquire into the sweating system reported:

> That it is necessary that either there should be one Factories Act for the Dominion, or that in their main provisions, at any rate, the Factories Acts of all the provinces should be similar, is the unanimous opinion of all employers as well as employees with whom I have spoken on the subject.[2]

The Dominion's inaction on the proposed factories legislation of the eighties would seem to have been justified by decisions of the Privy Council. A decision of 1882 in Russell *v.* The Queen [3] held that the Dominion Parliament had the right to restrict intemperance under its "peace, order and good government" powers and it has been argued that as this legislation infringed on property and civil rights the decision afforded a precedent for federal labor legislation. But according to more recent opinion, the Canada Temperance Act "was held not to be one in relation to property and civil rights but one dealing with public wrongs and so drawn into direct relation with criminal law." [4] Or, again,

[1] *Royal Commission on the Relations of Labor and Capital, op. cit.*, p. 90.

[2] *Sessional Papers* (No. 61) 1896, p. 17.

[3] [1882] 7 *A. C.* 829.

[4] *Cf.* opinion of Mr. Justice Hodgins in Industrial Disputes Investigation Act case. 55 O. L. R. 454 at p. 485.

that at the time intemperance must have been considered "a menace to the national life of Canada so serious and pressing that the national Parliament was called on to intervene to protect the nation from disaster." [1]

The Judicial Committee of the Privy Council indicated in City of Montreal *v.* Montreal Street Railway Company [2] that while provincial power was limited by the clause at the end of Section 91 of the British North America Act, expressly stating that none of the enumerated Dominion powers should be deemed matters of a local or a private nature assigned exclusively to the provinces, a limitation applying only to these subjects, the Dominion on the other hand could not, by virtue of its "peace, order and good government" powers in the introductory clause, trench on subjects exclusively assigned to the provinces by section 92.

The decision in Fort Frances Pulp and Power Co. *v.* Manitoba Free Press Company indicated that the regulation of the price of newsprint paper was within these residuary powers of the Dominion, but the judgment states: "It is clear that in normal circumstances the Dominion Parliament could not have so legislated as to set up the machinery of control over the paper manufacturers." [3]

Referring to this decision, Mr. Justice Hodgins stated in the Industrial Disputes Investigation Act case that it was justified by special conditions of emergency, a view concurred in by Viscount Haldane. And Mr. Justice Duff, in the Board of Commerce case,[4] said:

> There is no case of which I am aware in which a Dominion statute not referable to one of the classes of legislation included in the enumerated heads of section 91 and being of such a

[1] *Cf.* opinion of Viscount Haldane in Industrial Disputes Investigation Act case. [1925] 2 D. L. R. 5.

[2] [1912] *A. C.* 333.

[3] [1923] *A. C.* 695, at p. 706.

[4] [1920] 60 *S. C. R.* 456, at p. 508.

character that, from a provincial point of view, it should be considered legislation dealing with "property and civil rights," has been held competent to the Dominion under the introductory clause.

In the Industrial Disputes Investigation Act case Viscount Haldane presented a formula for determining the Dominion's powers under the "peace, order and good government" clause as follows:

The Dominion Parliament has, under the initial words of section 91, a general power to make laws for Canada. But these laws are not to relate to the classes of subjects assigned to the Provinces by section 92, unless their enactment falls under heads specifically assigned to the Dominion Parliament by the enumeration in section 91. When there is a question as to which legislative authority has the power to pass an Act, the first question must therefore be whether the section falls within section 92. Even if it does, the further question must be answered, whether it falls also under an enumerated head in section 91. If so, the Dominion has the paramount power of legislating in relation to it. If the subject falls within neither of the sets of enumerated heads then the Dominion may have power to legislate under the general words at the beginning of section 91.

There is evidence of similar limitation of the trade and commerce power. It was held in 1881 in Citizens Insurance Company *v.* Parsons [1] that the trade and commerce clause of Section 91 of the British North America Act included political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of interprovincial concern and, it might be, general regulation of trade affecting the whole Dominion; but did not include the regulation of the contracts of a particular business.

In Hodge *v.* The Queen [2] the decision in Russell *v.* The

[1] 7 *App. Cas.* 96. [2] 9 *App. Cas.* 117.

Queen was approved but the provisions of the Ontario Liquor License Act of 1877 (c. 181) of a merely local character for the regulation of taverns were held not to interfere with the Dominion's authority in "the general regulation of trade and commerce" and to be within the authority of the province.

In 1885 it was held, without giving reasons, that the Liquor Licensing Act, 1883, known as the McCarthy Act, which sought to establish a local licensing system throughout Canada, was *ultra vires* of the Dominion Parliament.[1]

In 1915 it was held in John Deere Plow Company *v.* Wharton that the Dominion's power to regulate trade and commerce can be utilized only in aid of other specified authority.[2]

In the Alberta case [3] it was held that the provisions of the Dominion Insurance Act of 1910 (c. 32), which forbade carrying on of the business of insurance except under a federal license, were *ultra vires* of the Parliament of Canada. According to this decision the Dominion Parliament is restricted to regulations relating to general trade and commerce. The trade and commerce power, it was held, did not extend to the regulation by a licensing system of a particular trade and the provision in question could not be enacted under the Dominion's right to legislate for the "peace, order and good government of Canada" as it trenched on the power of the provinces to make laws as to "civil rights in the province."

In the Industrial Disputes Investigation case Viscount Haldane said:

> It is, in their Lordships' opinion, now clear that excepting so far as the power can be invoked in aid of capacity conferred

[1] Unreported.

[2] [1915] *A. C.* 330 at p. 340.

[3] [1916] 1 *A. C.* 588.

independently under other words in section 91, the power to regulate trade and commerce cannot be relied on as enabling the Dominion Parliament to regulate civil rights in the provinces.

There are also important pronouncements limiting the Dominion's criminal law powers. According to Haldane in the Board of Commerce case the Dominion Parliament cannot pass legislation interfering with provincial rights and attempt to justify it by ancillary measures creating crimes.[1]

In the Reciprocal Insurers case[2] Mr. Justice Duff, delivering the judgment of the Judicial Committee, said, in summing up a number of previous decisions:

> In accordance with the principle inherent in these decisions their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under section 91, head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the provincial sphere, to deal with matters committed to the Provinces, it cannot be upheld as valid.

In the recent Industrial Disputes Investigation Act case the Judicial Committee of the Privy Council held that this federal law trespassed upon the provincial powers over property and civil rights in authorizing boards of conciliation to enforce attendance of witnesses, compel production of documents, etc. The Dominion Parliament could not utilize its right to make laws for the peace, order and good government of the country, or its jurisdiction in criminal law matters, or its right to regulate trade and commerce to this end.[3] The Judicial Committee concurred in the view ex-

[1] In Re the Board of Commerce Act, 1919, and the Combines and Fair Prices Act, 1919, [1922] *A. C.* 191, at pp. 198-9.

[2] [1924] *A. C.* 328, at p. 342.

[3] *Cf. infra*, p. 55, for industrial undertakings covered by the act.

pressed in the lower court by Mr. Justice Hodgins that: "This Act could not be supported as dealing with a case of (1) emergency, or (2) general Canadian interest and importance, or (3) with a power conferred under any of the enumerated heads in section 91." [1]

In view of this decision the law was amended in 1925 (c. 14). The amendment is of interest as showing the undertakings to which it was considered this Dominion legislation could properly be applied. It was stated:

This Act shall apply to the following disputes only: (i) Any dispute in relation to employment upon or in connection with any work, undertaking or business which is within the legislative authority of the Parliament of Canada, including but not so as to restrict the generality of the foregoing:

(a) works, undertakings or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime;

(b) lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting any province with any other or others of the provinces, or extending beyond the limits of the province;

(c) lines of steamships between a province and any British or foreign country;

(d) ferries between any province and any British or foreign country, or between two provinces;

(e) works, undertakings or businesses belonging to, carried on or operated by aliens, including foreign corporations immigrating into Canada to carry on business;

(f) such works as, although wholly situate within the province, have been or may be declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces;

(g) works, undertakings or business of any company or corporation incorporated by or under the authority of the Parliament of Canada.

[1] [1925] 2 D. L. R. 5.

(ii) Any dispute which is not within the exclusive legislative authority of any provincial legislature to regulate in the manner provided by this Act.

(iii) Any dispute which the Governor in Council may by reason of any real or apprehended national emergency declare to be subject to the provisions of this Act.

(iv) Any dispute which is within the exclusive legislative jurisdiction of any province and which by the legislation of the province is made subject to the provisions of this Act.

British Columbia has enacted and other provinces have considered legislation under this last clause, making the Dominion law applicable to disputes within provincial jurisdiction. The Trades and Labor Congress has not attempted to promote such provincial laws, as it holds that the only satisfactory solution is an amendment to the British North America Act enabling the Dominion to enact such legislation.

The question of jurisdiction assumed a new importance when Canada began to consider her obligations as a party to the Labor Section of the Treaty. Evidently it was thought at first that the Dominion Parliament could give legal effect to any convention or recommendation within provincial jurisdiction if the provinces did not act. In 1920 the Hon. Senator G. D. Robertson, then Minister of Labor, advised one of the provincial governments that had raised the question of jurisdiction in eight-hour-day legislation:

> The Federal Government concedes the right of the provinces to enact legislation on this subject, but that if the Provincial Legislatures do not see fit to act in the matter, the Federal Government has jurisdiction, under its treaty-making rights, to enact such legislation, on this or any other subject, as may be necessary to give effect to the provisions of any international treaty to which Canada is a subscribing party.[1]

[1] *Labour Gazette*, vol. xx, p. 208.

But the government decided upon a less ambitious part and soon afterward expressed another view. An order-in-council of November 6, 1920, concurred in the opinion of the Minister of Justice that the government's obligation under the Labor Section of the Treaty would be fully carried out if the different conventions and recommendations were brought before the competent authority, Dominion or provincial, within one year from the closing of the session of the Conference or, in exceptional circumstances, within eighteen months. It was stated that "the Treaty engagement being of this character it is not such as to justify legislation on the part of Parliament under the authority of Section 132 of the British North America Act, 1867." [1]

The government has proceeded on this view, referring the conventions and recommendations to the Dominion or the provinces, according to the opinion of the Minister of Justice as to which was the competent authority in each case. Different opinions were expressed as to the jurisdiction of the federal and provincial authorities on the eight-hour-day convention. The Select Standing Committee on Industrial and International Relations of the House of Commons, which had been considering the conventions, recommended that an advisory opinion on the question of jurisdiction should be secured from the Supreme Court of Canada, and the government referred this question to the Court and asked an opinion as to its obligations with respect to the conventions and recommendations. The unanimous judgment of the Court,[2] delivered June 11, 1925, confirmed the view expressed in the order-in-council of November 6, 1920, it being held that the obligation of the Dominion Govern-

[1] *Ibid.*, vol. xx, p. 1492. Section 132 of the British North America Act gives treaty-making powers to the Parliament and Government of Canada.

[2] [1925] *S. C. R.* 505.

ment was merely to bring the proposal before the competent authority. According to the judgment, eight-hour-day legislation is generally within the competence of the provincial legislatures but within the powers of the federal Parliament for parts of the country not within the boundaries of any province and with respect to employees of the Dominion Government.

The decision is in accord with practice. The powers assigned to the Dominion under the British North America Act with respect to immigration, navigation, fisheries, the criminal law and trade and commerce have enabled it to deal with alien labor, employment agencies for immigrants, protection of seamen and fishermen, trade unions and the manufacture and sale of white phosphorus matches.[1]

The Dominion's criminal law prerogative has given it jurisdiction over such matters as unlawful association, conspiracy, picketing, violence and intimidation. The provinces have had control of the regulation and inspection of factories, mines, shops, railways, elevators and other work places, wages and hours, industrial accidents and diseases, child labor, school attendance, vocational education, contracts of employment, workmen's liens, licensing of workmen, health of employees and employment offices. The Dominion has passed no legislation in these matters except with regard to its own works and employees, after the style of the fair wages order-in-council for the regulation of wages on government contracts, the act of 1900 to protect the health of employees on Dominion public works in remote regions, the regulations to prevent sweating in establishments working on government clothing contracts, the law for the protection of wages on public and subsidized works (R. S. C. 1906,

[1] For the text of Canadian labor laws see *Labour Legislation in Canada as existing December 31, 1920,* and the subsequent annual volumes on labor legislation published by the Department of Labor of Canada.

c. 98) and the law of 1918 (c. 15) to provide accident compensation for federal employees.

Where, as in the fields of technical education, public health and public employment service, the Dominion has entered because of the interprovincial character of the problem or the necessity in the national interest of securing uniformity in provincial effort, it has been restricted to research, publication of information and grants in aid of provincial schemes. In a few instances the Dominion has been able to secure agreement among the provinces upon a national scheme of coordination and standardization, as in the Agricultural Instruction Act (1913, c. 5), the Employment Offices Coordination Act (1918, c. 21) and the Technical Education Act (1919, c. 73).

In some subjects both authorities have concurrent jurisdiction. The British North America Act empowers the provinces to legislate on agriculture and immigration but provincial laws must not be repugnant to any Dominion legislation. The act authorizes the Dominion to disallow provincial laws if they invade the federal field or are considered injurious to the national interest. The question of jurisdiction has been frequently raised in the courts and the decisions show that each authority has trespassed on the other's sphere.

A conspicuous case on the Dominion side is the Industrial Disputes Investigation Act, passed in 1907 and declared *ultra vires* of the Dominion Parliament by the Judicial Committee of the Privy Council in January, 1925.[1] Sunday rest legislation of Nova Scotia and Ontario has been held *ultra vires,*[2] and the Dominion has disallowed such

[1] *Cf. supra,* pp. 54-55.

[2] *Cf. infra,* pp. 277, 281.

measures as the Labor Regulation Act of British Columbia (1898, c. 28), which sought to exclude Oriental workers from various employments carried on under franchise from the provincial legislature. A similar law, the Subsidized Works Labor Regulation Act (1902, c. 39), was also disallowed after a decision of the Supreme Court that it invaded the Dominion's authority on naturalization and aliens. An appeal to the Privy Council was dismissed. Another British Columbia law of 1902 (c. 48), which prohibited the employment of Japanese and Chinese below ground in mines, was also disallowed.

The power of disallowance has been exercised in relatively few cases and Bourinot says:

> It is now generally admitted that it is advisable to leave the courts whenever practicable to deal with all questions involving matters of constitutional controversy and to reserve the power of disallowance for unconstitutional legislation, on which there is no doubt, or for cases involving the peace, unity, or national obligations of the Confederation.[1]

Fortunately the courts play a less important rôle in labor legislation in Canada than in the United States, for according to the British tradition, which Canada has followed, Parliament is supreme within its assigned field. In the United States the legislature is compelled to observe limitations

> not to interfere with individual freedom of contract or not to take property without due process—limitations which . . . afford the courts incessant opportunity for considering *how* a given legislative authority has exercised its powers. All that a Canadian court can do is to decide whether the legislature which passed a law was on the right side of the jurisdictional fence;

[1] J. G. Bourinot, *Manual of the Constitutional History of Canada,* footnote, p. 149.

if it was, the court cannot inquire into the reasonableness or fairness of its action.[1]

Under this division of authority it seems inevitable that a majority of the proposals of the International Labor Organization will call for action by the provinces. Of the twenty conventions adopted to the end of 1925, eight fall within the jurisdiction of the Federal Parliament, and of these, the five following come within the Dominion's authority over navigation and fisheries—establishing of facilities for finding employment for seamen, fixing the minimum age for admission of children to employment at sea, unemployment indemnity in case of loss or foundering of the ship, fixing the minimum age of employment for trimmers and stokers on vessels, and compulsory medical examination of young persons employed on vessels. Two others — a weekly rest-day in industrial undertakings and the right of association for agricultural workers — concern the federal criminal-law prerogative. It is thought that the requirements of the convention on public employment offices which contemplates a nation-wide employment service can be met under the federal Employment Offices Coordination Act, which provides for cooperation of the Dominion and provincial governments to that end. The remaining twelve conventions [2] deal with subjects within provincial competence. Of the eight conventions within its jurisdiction, the Dominion, by right of control in maritime affairs, has given effect to four. This was done by an amendment to the Canada Shipping Act passed in 1924 and the conventions have been formally ratified. Resolutions by Nova Scotia and Saskatchewan endorsing the principles of certain draft conventions and recommendations [3] have been received by

[1] J. W. MacMillan, *American Labor Legislation Review*, June, 1925, p. 165.

[2] *Cf. supra*, p. 21 *et seq.*

[3] *Cf. Labour Gazette*, vol. ——, pp. 300, 473.

the Secretary of State for External Affairs and communicated to the Secretary-General of the League of Nations under the provisions which permit a federal country to inform the League of "action taken" in lieu of ratification.

Even if all the provinces had legislation conforming to a given decision, it might prove impossible for the federal government to ratify the convention for them. Dr. Riddell has indicated that the provinces would have to agree with the Dominion not to change the law while the convention was in force, and "this would appear to amount to a conventional derogation from a fundamental law . . . and as such would be void"; and further that it is highly improbable that conventions within provincial jurisdiction and accepted by the provinces can be held as obligations within the Dominion's treaty-making power.[1]

This legal situation makes it difficult for Canada to legislate from a national viewpoint. The will of a majority of the population in a majority of the provinces, favoring the enactment of legislation embodying certain of the decisions of the International Labor Organization may be frustrated while a minority in one or two provinces refuse to pass such legislation and thereby place themselves at a competitive advantage. This problem of the tardy minority may have been anticipated at Confederation for the British North America Act in section 94 authorizes the Dominion Parliament "to make provision for the uniformity of all or any of the laws relative to property and civil rights." But it was stated that any act for this purpose should not become effective in any province until enacted as a provincial statute by its legislature.

The method of conference may be used to promote uniformity and something has been done in this direction. On

[1] W. A. Riddell, "Effective Participation of Canada in the International Labour Organization," *Social Welfare*, March, 1925, p. 114.

the recommendation of the Council of the Canadian Bar Association the provincial governments appointed commissioners, who met in 1918 in interprovincial conference and annually since that year for the promotion of uniformity in legislation. The commissioners have endeavored to harmonize the laws on workmen's compensation and mechanics' liens.[1] The Association of Workmen's Compensation Boards of Canada, which holds annual meetings, has as one of its main objects greater uniformity in the various workmen's compensation acts.

The Royal Commission on Industrial Relations, appointed in April, 1919, recommended the calling of a National Industrial Conference and suggested, among the subjects for consideration, unification and coordination of Dominion and provincial labor laws. One of the resolutions of the Conference, which met in September, 1919, stressed the advantages of uniformity and suggested that the matter should be referred to a commission of which the Dominion and each of the provinces should appoint three members, representing respectively the government, employers and employees. The commission was appointed and its report of May, 1920, proposed a number of standard provisions for laws on workmen's compensation, minimum wages for women and girls, industrial disputes and for legislation regulating labor conditions in factories and mines.

The Employment Service Council is an example of conference. This body, representing the Dominion and provincial governments and various organizations of employers and employees, is charged with the duty of advising the Minister of Labor in the administration of the Employment Offices Coordination Act. Its annual meetings have promoted a high degree of uniformity in the operation of public employment offices and a considerable measure of

[1] *Labour Gazette*, vol. xxii, p. 844.

agreement on a policy of abolishing fee-charging employment agencies.

In 1922 and 1923 conferences of representatives of the Dominion and the provinces were held in Ottawa to consider decisions of the International Labor Organization and reached agreement on several resolutions recommending action to the competent authorities on various conventions.

While these conferences give promise of effecting a larger uniformity in labor legislation the Dominion could go further. It should be possible in these annual meetings to agree on model laws embodying not only the decisions of the International Labor Organization but provisions adapted to Canada's peculiar requirements. The Dominion could then use its undisputed powers to apply these proposals to its own works and undertakings and so establish standards to which provincial legislation would tend to conform. The United States Congress passed in 1916 a new accident compensation law for its employees, which in many respects is a model for the state legislatures. The Dominion law [1] merely applies to each federal employee the legislation of the province in which he resides, with the result that federal civil servants suffering the same disability but living on opposite sides of the line dividing Ontario and Quebec receive widely differing sums in compensation. On some subjects, clearly within provincial jurisdiction, it might be possible by the method of subventions to win adherence to a national program as has already been done with regard to road-building, housing, agricultural education, vocational education and employment offices. This method might be used in immigration, for example, or indeed in any other field of labor legislation involving the provinces in administrative expense.

Publication of the results of research in the various fields of labor legislation would also promote uniformity, and the

[1] 1918, c. 15, as amended by 1919, c. 14, s. 1.

Department of Labor has made no small contribution in this regard through the *Labour Gazette,* the annual and quinquennial reports on the labor laws of Canada and the special enquiries of the Department. Doubtless Canada's new part in promoting the internationalization of labor legislation will lead to expansion of this work.

# CHAPTER III

## The Canadian Labor Movement and Labor Legislation

"The sacredness of human personality is more important than all other considerations. Without infinite regard for individual life, however obscure or deformed, expressions of social values are meaningless. Estimates of national power, pride in industrial growth, forecasts of world expansion—any and all of these which reckon material gains apart from the human losses they involve, mistake for Life itself the coarse texture of but a part of the garment of Life." (*Industry and Humanity,* W. L. Mackenzie King.)

It was not until the early seventies that the trade unions of Canada exerted any important influence in legislation. There were organizations of printers, shoemakers, stonecutters and coopers in Toronto, Montreal and Quebec as early as the thirties and forties and in the fifties and sixties there were shipwrights and caulkers at Kingston, Victoria and Halifax, sailmakers at Quebec and longshoremen at St. John.[1] The shoemakers' union, the Knights of St. Crispin, which had a rapid growth in the United States during the Civil War, organized a number of lodges in Canada in the years 1867-70 in such places as Montreal, Toronto, St. Johns, Quebec, Guelph, Hamilton and Windsor. But the organization lost ground as a result of the cessation of government orders and economic depression after the war and the Canadian lodges were disbanded.[2] There were various other local labor organizations but in the pre-Confederation

[1] R. H. Coats, "The Labour Movement in Canada," *Canada and Its Provinces,* vol. ix, pp. 292-3.

[2] Don D. Lescohier, *The Knights of St. Crispin,* p. 7.

period there was no central body to organize union strength in support of a legislative program.

After Confederation, in the years 1869-73, manufacturing prospered, foreign trade greatly increased, railway construction was active and immigrants were arriving in unprecedented numbers. The local unions of Toronto organized in the Toronto Trades Assembly and a similar body was established in Ottawa, where the construction of the Parliament buildings and government printing had strengthened the building and printing unions. And while conditions favored the unions, inspiration was coming from the Mother Country. The Trade Union Act was passed in 1871 and the activity of the Nine Hours League was heartening a similar Canadian movement, centered in Toronto.

An event of 1872 served as a unifying force among the scattered local bodies. The Nine Hours Movement culminated in a strike of printers in Toronto in July, 1872, and when several of the men were imprisoned Sir John A. Macdonald championed their cause in opposition to Mr. George Brown, editor of the *Toronto Globe*, the old leader of the Reform Party and an active proponent of the employers' side of the dispute. Sir John adopted with some modification the English Trade Union Act of the year before, which provided that trade unionists could not be prosecuted for conspiracy merely because the purposes of their union were in restraint of trade. Incidentally the occurrrence shows that occasionally the desire of political leaders to gain party advantage has had a part in securing the enactment of legislation. It has been said that Sir John's course in this matter explains in part the extraordinary success that has since attended the Conservative Party in Toronto.

The next year the Toronto Trades Assembly summoned the local unions to a convention in that city. There were no delegates from unions outside the province of Ontario but

out of this meeting grew the first national body, the Canadian Labor Union. The new organization had a brief existence but it was aggressive. It was prophesied at the first meeting that "the time is not far distant when the great men of the land will find it absolutely necessary to consult with the workingmen in the matter of legislation, both political and commercial." [1] The Union held a second meeting in Ottawa in 1874 and a third in St. Catharines in 1875, where it was declared "that the electoral franchise should be so extended as to give a vote, both municipal and parliamentary, to every man of sound mind and unconvicted of crime and not being a burden on the country."

The organization was actively interested in labor legislation. It took up the prevailing demand for the nine-hour day and advocated the settlement of labor disputes by arbitration, the creation of a labor bureau and restrictions on prison labor. There was much concern over the increase in immigration and it roundly condemned the granting of large sums of money by the local and Dominion governments for immigration purposes. The Canadian Labor Union found that under the Master and Servant Act of Ontario, breach of contract was still a criminal and not a civil offense. The organization addressed itself to the task of securing remedial legislation and in 1877 (c. 35) the Dominion Parliament repealed the Master and Servant Acts of Upper Canada, Lower Canada and Prince Edward Island and so made breach of contract of service a civil wrong and not a crime.

Nor was the federal sphere neglected. Sir John Macdonald made much of the Trade Unions Act of 1872, which did not give labor organizations the same measure of recognition as the British act in that it applied only to registered unions. Moreover his government also passed the compan-

[1] *Annual Report of the Bureau of Industries for the Province of Ontario* (Toronto), 1889, p. 62.

ion act enacted in England, which detracted much from the legal status granted by the other. The measure was rushed through all stages in the House in one day. He explained in the House in 1875 that he had assented to the detracting measure, which provided punishment for certain specified acts during strikes, in order to prevent any possibility of opposition to the Trade Unions Act on the ground that it went farther than the English law.[1]

The Canadian Labor Union protested against the Criminal Law Amendment Act and in 1873 Parliament received petitions for its amendment from the Amalgamated Engineers, Hamilton Canadian Labor Unity, Hamilton Society of Engineers, Ingersoll Coopers Union, London Coopers Union, London Iron Moulders Union, Montreal Operative Plasterers Union, Montreal Typographical Union, Oshawa Coopers Union, Ottawa Freestone Cutters, Ottawa Limestone Cutters Association, Ottawa Plasterers Union, Ottawa Tailors Operative Union, Ottawa Trades Council, Ottawa Typographical Union, Quebec Typographical Union, Sarnia Coopers Union, Toronto Trades Assembly.[2]

Evidently, labor's protests were effective for in 1874 Parliament appointed a select committee to consider changes in the law relating to violence, threats and molestation. It was stated in the House that meetings of workingmen were held in Toronto, Ottawa, Hamilton and St. Catharines, praying for the repeal of the obnoxious legislation and favoring a bill proposed by Irving, the member for Hamilton.[3]

Important amending acts were passed in 1875 and by the Liberal Government of Alexander Mackenzie in 1876. The new legislation provided, as Edward Blake said years later,

[1] *Hansard*, 1875, p. 1036.

[2] *Cf. Index, Journals of House of Commons* and *Sessional Papers*, 1867-76, p. 487.

[3] *Hansard*, 1875, p. 899.

that "conspiracy . . . for the purpose of a trade combination, to do an act punishable at common law only, or punishable by statute under summary procedure, was no longer criminal and remained no longer capable of being prosecuted under the law of conspiracy." [1] The act of 1876 reproduced in Canada the "peaceful picketing" clause of the English law of the year before.[2] Canadian trade unions were in possession of the best protection against conspiracy they have ever enjoyed. At this time the two parties seem to have been actually competing for working-class favor. While in 1876 Mackenzie somewhat sarcastically conceded to Macdonald "his laurels of 1872", satisfaction was expressed on the Government benches "that it fell to the lot of this Liberal Government to amend an act which pressed hardly upon workingmen." [3]

But this favorable attitude was not long continued. Trade unionism lost ground. The Canadian Labor Union disappeared, together with the Toronto Trades Assembly, in the depression that began in 1873. Skelton says of the later seventies:

> Manufactures at best marked time. The industries which suffered most were those which depended on foreign markets, such as the lumber trade, or which were exposed to the competition of English textile manufacturers or United States hardware or furniture makers or jobbers; or those in which high profits had tempted excessive domestic investment, such as the boot and shoe industry.[4]

Labor legislation took a repressive turn. While the printers'

[1] *Cf. infra*, p. 129.

[2] *Cf. infra*, p. 128.

[3] *Hansard*, 1875, p. 1035.

[4] O. D. Skelton, "General Economic History, 1867-1912," *Canada and Its Provinces*, vol. ix, p. 123.

strike of 1872 brought legislation favorable to the unions, the strike of locomotive engineers on the Grand Trunk Railway, which began on December 29, 1876, gave rise to a Dominion statute of 1877,[1] now part of the Criminal Code, which made it a punishable offense on the part of railway employees to strike while a mail or passenger train was on the way to its destination within the Dominion.

This period of depression also brought defeat to Canadian labor's first venture in politics. In 1873 the Ottawa Typographical Union, founded in 1866, went on strike to prevent a reduction in wages by the contractor for the printing of Parliament. The work was so impeded that the contractor lost the contract but the struggle prompted the Ottawa Trades Council to nominate its president as candidate for the provincial legislature in the by-election of 1874. The labor candidate was successful in that year and again in the provincial election of 1875. But during the depression the movement in Ottawa dwindled to one local union and labor's representative was defeated in the election of 1879. In these adverse days the rising current of Canadian labor legislation, which had pressed slowly forward during the first half of the decade, disappeared under the surface of the country's industrial life to reappear and broaden into the provincial factory and shops acts of the eighties.

In the general election of 1878 the Conservatives were returned to power on a high protection platform and customs duties were advanced considerably by the tariff of 1879. Factories multiplied and towns grew rapidly. The village woolen and grist mills began to give way to the textile plants and flour mills of the larger centers. There was expansion in the cotton industry, in sugar refining, flour milling and tobacco manufacturing.[2] Furniture factories were estab-

[1] *Cf. infra*, pp. 129-31.

[2] Skelton, *op. cit.*, p. 187.

lished, especially in Western Ontario, and sawmills, planing mills and pulp mills grew in numbers. Construction of the Canadian Pacific Railway was being pushed forward to its completion in 1885. But a serious recession in foreign trade set in after 1883. The figures for that year were not again attained until 1893 and the upward swing of the business cycle did not begin until 1897.

In the first prosperous years of this period the Knights of Labor made their appearence in the country, the Trades and Labor Congress of Canada was established and the Provincial Workmens' Association was organized in Nova Scotia. The first Canadian Assembly of the Knights of Labor was organized in Hamilton in 1881, but its growth was checked by the general strike of the telegraph operators in 1883. In 1885 there was "an almost phenomental rush into its ranks." [1] As the Canadian Congress Journal states, "The Knights of Labor was the dominant and most actively militant force in the working-class movement. At the 1887 convention, held in Hamilton, twenty-seven of the forty-two delegates in attendance represented District or Labor Assemblies of the Knights of Labor." [2]

The views of this body on labor legislation are best indicated by the preamble to their constitution which, it may be noted, contains at least three of the nine principles of the Labor Section of the Treaty of Versailles.

> The alarming development and aggression of aggregated wealth, which, unless checked, will inevitably lead to the pauperization and hopeless degradation of the toiling masses, render it imperative, if we desire to enjoy the blessings of life, that a check should be placed upon its power and upon unjust accumulation, and a system adopted which will secure to the toiler the fruits of his toil; and as this much-desired object can only

[1] *Report Ontario Bureau of Industries, op. cit.*, 1886, p. 76.

[2] *Canadian Congress Journal*, August, 1925, p. 10.

be accomplished by the thorough unification of labor, and the united efforts of those who obey the Divine injunction that "in the sweat of thy brow shalt thou eat bread" we have formed the order of the Knights of Labor with the view of securing the organization and direction by cooperative effort of the power of the industrial effort, and submit to the world the objects sought to be accomplished by our organization, calling upon all who believe in securing the greatest good to the greatest number to aid and assist us:

I. To bring within the folds of organization every department of productive industry, making knowledge a standpoint for action, and industrial, moral worth, not wealth, the true standard of individual and national greatness;

II. To secure to the toilers a proper share of the wealth that they create; more of the leisure that rightfully belongs to them; more society advantage; more of the benefits, privileges and emoluments of the world; in a word, all those rights and privileges necessary to make them capable of enjoying, appreciating, defending and perpetuating the blessings of good government;

III. To arrive at the true condition of the producing masses in their educational, moral and financial condition, by demanding from the various governments the establishment of bureaus of labor statistics;

IV. The establishment of cooperative institutions, productive and distributive;

V. The reservation of the public lands—the heritage of the people—for the actual settler: not another acre for railroads or speculators;

VI. The abrogation of all laws that do not bear equally upon capital and labor; the removal of unjust technicalities, delays and discriminations in the administration of justice, and the adopting of measures providing for the health and safety of those engaged in mining, manufacturing or building pursuits;

VII. The enactment of laws to compel chartered corporations to pay their employes weekly in full, for labor performed during the preceding week, in lawful money of the country;

VIII. The enactment of laws giving mechanics and laborers a first lien on their work for their full wages;

IX. The abolishment of the contract system on national, state and municipal work;

X. The substitution of arbitration for strikes, whenever and wherever employers and employes are willing to meet on equitable grounds;

XI. The prohibition of the employment of children in workshops, mines and factories, before attaining their fourteenth year;

XII. To abolish the system of letting out by contract the labor of convicts in our prisons and reformatory institutions;

XIII. To secure for both sexes equal pay for equal work;

XIV. The reduction of the hours of labor to eight per day, so that the laborers may have more time for social enjoyment and intellectual improvement, and be enabled to reap the advantages conferred by labor-saving machinery which their brains have created;

XV. To prevail upon governments to establish a purely national circulating medium issued directly to the people, without the intervention of any system of banking corporations, which money shall be a legal tender in payment of all debts, public and private.[1]

The organization was influential in securing the factory legislation of the eighties and towards the end of the decade it had a legislative committee which cooperated with the executive of the Trades and Labor Congress. Its membership increased in the Ottawa district in the early nineties but its predominance in the Trades and Labor Congress waned after 1893 and control passed to the international organizations.

In 1883 the Trades and Labor Congress developed from a convention in Toronto called by the Trades and Labor Council of Toronto, the old Toronto Trades Assembly which was

[1] *Report Ontario Bureau of Industries, op. cit.*, 1886, pp. 73-74.

reorganized in 1881. The Congress held a second meeting in 1886 and there has been an annual conference since that time. This body gave electoral reforms a large place in its early deliberations and it was also influenced by the Henry George philosophy. The subjects considered at the Congress of 1883 were: Chinese immigration, shorter hours, assisted European immigration, factory act, seamen's act, property qualifications for municipal offices, manhood suffrage, the land question, the insolvency law, cumulative voting, extension of magistrates' powers respecting the wage of employees, land grants, tax exemptions, government aid to colleges, organization of female labor, pauper immigration, the temperance question, Torrens' system of land transfer and direct labor representation in Parliament.[1]

In the Maritime Provinces also labor unions were active in the eighties and especially the Provincial Workmen's Association of Nova Scotia and New Brunswick, the great majority of whose members were miners in the Nova Scotia coal fields. This Association, organized in 1879, incorporated in 1881 and in existence until 1917, has an honorable record as a promoter of labor legislation.

One of its objects, as stated in the constitution, was "to shorten the hours of labor; to strive in obtaining better legislation, whereby the more efficient management of mines and other works may be effected thereby securing the health and safety of the workmen, and in enforcing such legislation as already exists." The Association held conventions annually but the grand council met more frequently. It had a legislative committee whose chief duty was to urge the organization's views respecting legislation upon the provincial government. As early as 1880 the Association asked the Nova Scotia government for better inspection of the mines. Soon

[1] *Ibid.*, 1889, p. 64.

after, objection was made to the practice of appointing mine managers only to the board of mines examiners. Committees for the study of the mining laws were appointed by some of the lodges at the request of the grand council and in 1884, when the enrolled membership was about 1200, the Association considered a number of questions concerning the protection of workmen in mines.[1]

About this time they obtained legislation that representatives of the miners might be present at coroners' inquests and examine witnesses and that only certified officials should direct the mines. They secured the appointment of deputy inspectors with a view to the better ventilation and general management of the mines,[2] and committees of miners were granted the right of inspection. When the operators were able to have regulations passed which had the effect of excluding practical miners from the position of deputy inspector, the Association succeeded in securing amendments which removed this difficulty.[3] In 1886 they obtained legislation that liquor licenses should not be granted to any establishment within a mile of a coal mine. They favored compulsory arbitration of industrial disputes and pressed their view upon the legislature. The operators opposed a bill on the subject, introduced in 1887, and though passed by the Lower House, it was defeated in the Legislative Council.[4] The bill was passed in 1888 and in 1889 the Association succeeded in securing the enactment of a law which provided for the settlement of particular disputes by arbitration boards. At the Association's suggestion the government established a

[1] *Provincial Workmen's Association, Minutes of Proceedings of Grand Council* (typewritten copy in Department of Labor Library, Ottawa), p. 58.

[2] *Ibid.*, p. 77.

[3] *Ibid.*, p. 92.

[4] *Ibid.*, pp. 146, 155, 171, 205, 241.

plan of technical instruction for miners. In 1889 government aid to miners' relief societies was provided for and in the same year the Association expressed pleasure "at the action of the Fielding Government in so extending the franchise that a vast majority of the workers, in and about coal mines, will be included in its operation." [1]

In 1891 the grand secretary reported that the Association had succeeded in having amendments made to the Mines Regulation Act which gave the miners power to select checkweighmen not in the employ of the company, compelled colliery employers to pay wages fortnightly, regulated the employment of boys, required mine workers to serve an apprenticeship for two years before taking charge of a working place and all miners to hold certificates. The grand council was especially enthusiastic over the safeguards secured through insertion of the "powder clause" in the Mines Act.[2] The Association secured a number of other reforms, such as the right of the workmen to select their own doctor, prohibition of the stoppage of wages for various kinds of taxes and the right of a worker, when authorized by twelve others, to prosecute a mine manager for any violation of the Mines Act.

With the revival of trade-union strength in the better times labor again sought to elect its own representatives. The Toronto Trades and Labor Council nominated a candidate to contest the West Toronto seat in the provincial legislature in the election of 1882. The unions of Hamilton also nominated a representative but both labor candidates from these two cities were again defeated in 1886, the year of a prolonged strike by the employees of the Toronto Street Railway Company, but a labor candidate for the County of Lincoln was elected—the second representative of labor to be elected

[1] *Ibid.*, pp. 191-92.

[2] *Ibid.*, pp. 228, 238.

to the provincial legislature. In Nova Scotia also organized labor was testing its political strength. The Provincial Workmen's Association decided in 1885 to enter actively into politics and in 1886 two of its members contested seats in the provincial legislature for Pictou and Cumberland. Both were defeated but the Association was successful in returning two candidates in the election of 1890.

But the expansion of the cities was overdone in this period. "Especially in Ontario," says Skelton, "manufacturing and mercantile life had attracted from the farm a proportion of the population excessive in face of the slow expansion of the home market." [1] The advance of industrialism made the enactment of factory legislation inevitable for, as Mr. Seebohm Rowntree has said, "in almost every country where large scale industry has been developed it has initially been characterized by the ruthless exploitation of the workers." [2] In Canada this rapid development of manufacturing brought distressing factory conditions and governmental investigators reported a labor situation reminiscent of that indicated by official commissions in England a half century before.

In 1882, commissioners appointed by the Dominion Government "to enquire into the working of the mills and factories of the Dominion and the labour employed therein" stated in their report: [3]

> The employment of children and young persons in mills and factories is extensive and largely on the increase. It must be borne in mind that the children invariably work as many hours as adults. . . . They have to be at the mills or factories at 6.30 a. m., necessitating their being up from 5.30 to 6 o'clock for their morning meal, some having to walk a distance of half a mile or more to their work. This undeniably is too heavy a

[1] Skelton, *op. cit.*, p. 189.

[2] *Political Science Quarterly*, June, 1923, p. 190.

[3] Pp. 2-3.

strain on children of tender years and is utterly condemned by all except those who are being directly benefitted by such labor.[1]

The report of another official body, the Royal Commission on the Relations of Labor and Capital, published in 1889, states:

Many children of tender age, some of them not more than nine years old, were employed in cotton, glass, tobacco and cigar factories and in other places. At one place in Ontario children, certainly less than eleven years of age, were employed around dangerous machinery. Some of them worked from six o'clock in the morning till six in the evening, with less than an hour for dinner, others worked from seven in the evening till six in the morning. At Montreal boys were employed all night in the glass works. In the cotton factories the ordinary hours of labor were from 6.30 a. m. till noon, and from 12.45 till 6.15 p. m.; this for five days in the week. On Saturday the mills close at noon. Sometimes the afternoon work is continued till 7.15, without stopping for supper, and less frequently the machinery is in continuous operation from 12.45 till 9 p. m., making eight and a quarter hours of uninterrupted work, though it is in evidence that operatives are permitted to take a little lunch while the machinery is in motion.

The testimony respecting children employed in cigar and tobacco factories was of a very painful nature. Boys and girls, not more than ten years of age, were found in those places in considerable numbers, and some witnesses not older than fourteen had finished their apprenticeship at cigar-making and were working as journeymen. The evil in these instances was accentuated by the evident fact that the tobacco had stunted the growth of the witnesses and poisoned their blood. They were undersized, sallow and listless, wholly without the bright vivacity and rosy hue of health which should animate and adorn children.[1]

[1] *Report of the Royal Commission on the Relations of Labor and Capital in Canada*, p. 36.

On the subject of childbeating this report says:

The darkest pages in the testimony which follows are those recording the beating and imprisonment of children employed in factories. Your Commissioners earnestly hope that these barbarous practices may be removed, and such treatment made a penal offense, so that Canadians may no longer rest under the reproach that the lash and the dungeon are accompaniments of manufacturing industry in the Dominion.[1]

Sir Richard Cartwright said that "the evidence showed that little children were employed for periods of time that no grown man could work without serious injury." And again: "It is a disgrace to our civilization and to humanity that such a state of things should be permitted to exist in this country."[2]

From the outset the Knights of Labor and the Trades and Labor Congress urged the enactment of factory legislation and the manufacturers do not seem to have offered serious resistance during the upward swing of business in the early eighties. In 1882 the *Canadian Manufacturer* said, "We are sure to have a good deal of factory legislation on our statute books before long, and manufacturers may as well take note and govern themselves accordingly . . . Manufactures are prosperous and expanding, they fill the public eye far more than ever and the consequence is inevitable."[3]

Indeed, the *Canadian Manufacturer* exhorted the employers to improve conditions: "Now when many new factories are going up and when many old ones are being enlarged, what better time for taking those precautions demanded by a regard for human life, for health and for morality?"[4] This journal evidently had some fears that

[1] *Report of the Royal Commission on the Relations of Labor and Capital in Canada*, p. 10.

[2] *Hansard*, 1889, p. 1497.

[3] *Canadian Manufacturer*, Feb. 17, 1882, p. 51

[4] *Ibid.*, p. 51.

the unfavorable working conditions of factory employees would react to the political disadvantage of the policy of protection: "The National Policy, we say, can carry itself triumphantly through but it must not be burdened with unpopularities which have really nothing to do with it." [1] Legislators were cautioned, however, not to be overzealous in labor legislation. In view of the strong foreign competition Canadian infant manufactures could not yet carry the extra weight of too much factory legislation and conditions were not as bad as they had been in England. "We are not likely to see in Canada," the same journal remarked, "anything like the terrible abuses which years ago aroused public indignation in England and brought Lord Shaftesbury to the front as a reformer." [2]

A factory bill was brought forward in the Dominion Parliament the same year but it was laid over to the next session. In 1883 the government was on the eve of an election and decided not to press the bill but in 1884 the Ontario legislature enacted a measure which embodied all the provisions of the Dominion government's bill and some clauses taken from the English law. The Quebec legislature followed with a similar measure in 1885.

In the decline of prosperity after 1883 it became more difficult to secure the enactment of labor laws. The Ontario and Quebec governments enforced their factory acts only under pressure [3] and Parliament passed several repressive measures. In the revision of the federal statutes of 1886 the mere changing of the word "indictable" to "punishable" deprived the labor movement of much of the protection against the law of conspiracy granted in 1876.[4]

[1] *Ibid.*, p. 52.

[2] *Ibid.*, April 28, 1882, p. 153.

[3] *Cf. infra*, pp. 431, 438.

[4] *Cf. infra*, p. 131.

Some blame for the recession in trade was assessed upon the trade unions and especial condemnation was meted out in Parliament to the ship laborers of Quebec. It would appear from the rules of the Quebec Ship Laborers' Benevolent Association, a body incorporated in 1862, that the organized ship laborers of the port had been well able to protect their own interests without legislation. They had rules on an eight-hour day, wages, hours, the number of men to be employed in each compartment in loading or discharging, and other conditions of employment. Fines were imposed on members for working on vessels using donkey engines to load or unload lumber, for working with any foreman not a member of the union and for not quitting work when a member was discharged without a fault.[1]

The trade of the port had been declining from year to year until in 1887, Colonel G. Amyot, member for the County of Bellechasse, introduced in the House "An act to protect work on board of vessels." He stated that the conduct of the ship laborers had driven shipping from Quebec; they had given a bad reputation to the city and the whole country abroad. He asserted that "the trade all goes elsewhere because the ship laborers wish to earn a month's wages in two or three days' time, working eight or nine hours a day." [2]

The bill was passed in the closing days of the session but the young labor movement was able to organize a considerable protest in Parliament despite the short time available. Members read telegrams of protest from the Knights of Labor in Woodstock, Windsor, St. Thomas, Hamilton, Ottawa, and the Counties of Lincoln and Welland, from the Toronto Trades and Labor Council and the Oshawa Trades Council. The member for Montreal Centre proposed amendments put forward by labor organizations writing him

[1] *Hansard*, 1888, p. 46.

[2] *Ibid.*, 1887, p. 1230.

and other members from industrial constituencies made protest.[1] In 1888, however, the member for Bellechasse continued his requests for assistance from Parliament in the struggle with the Quebec Ship Laborers' Benevolent Association. He asserted that the population of Quebec was decreasing because of the union rules and declared, "I state as a fact that this association has ruined the harbor of Quebec."[2]

The next step in the policy of repression arose out of the merger movement of the time. During the eighties large trade combinations developed in the United States and at the same time Canadian business experienced its first important merger movement. In 1888 the House of Commons appointed a select committee "to examine into and report upon the nature, extent and effect of certain combinations said to exist with reference to the purchase and sale or manufacture and sale in Canada of any foreign or Canadian products." The committee found combinations to exist with respect to sugar and groceries, among coal dealers in Toronto, Ottawa, Montreal and London, in undertakers' supplies, among manufacturers of cordage and binding twine, among iron founders and oatmeal millers, in biscuits and confectionery, and in fire insurance. The report concludes:

> The Committee finds that the evils produced by combinations such as have been enquired into have not by any means been fully developed as yet in this country, but sufficient evidence of their injurious tendencies and effects is given to justify legislative action for repressing the evils arising from these and similar combinations and monopolies.

In 1889 Mr. N. Clark Wallace introduced a bill for the prevention and suppression of trade combinations. As first introduced the bill provided that its terms should not be con-

[1] *Ibid.*, 1887, pp. 1152, 1229.

[2] *Ibid.*, 1888, p. 47.

strued to modify or affect the Trade Unions Act in any manner. Mr. Wallace however introduced an amendment in the House of Commons, which was again so amended in the Senate as to annul Section 22 of the Trade Unions Act of 1872, according to which unions were not to be considered illegal merely because their rules were in restraint of trade. The measure was returned within one day of the end of the session to the House of Commons where it was passed. Mr. William Mulock was one of the members of the House who recorded his dissent from this revocation of a legal status granted to the unions almost two decades before. He asserted that "there is no longer room for doubt, according to the amendment made in the Senate, it absolutely repeals the twenty-second section of the Trade Unions Act." [1]

The Trades and Labor Congress took up the challenge and instructed its legislative committee "to lose no time in securing, if possible, such legislation as will give organized labor at least a legal status, of which it has been deprived." [2] In 1892, when the Criminal Code was consolidated, the anti-union clause of the combines legislation was omitted and the unions recovered the lost ground. But at this time the government took another step in the policy of abrogation and departure from British precedent. Without any warning the "peaceful picketing" clause of the law of 1876 was also omitted from the Criminal Code.[3] The withdrawal of this legislation was fraught with grave consequences for the unions and they are still striving to secure its reenactment.

Throughout the eighties the constituency of the Congress was limited to Ontario and accordingly its influence on legislation was confined to the Ontario and Dominion governments. Extension of its influence beyond the borders of

[1] *Hansard*, 1889, p. 1689.

[2] *Trades and Labor Congress*, 1889, p. 24.

[3] *Cf. infra*, p. 134.

Ontario began in 1889 when the annual meeting, held in Montreal, was attended by a number of delegates from the Province of Quebec. The first representation from British Columbia came to the convention of 1890, held in Ottawa, and protested vigorously against the encouragement of Chinese immigration by employers in British Columbia "to the great detriment of dignified white labor." The Congress asked the Dominion to prohibit the importation of Chinese workers and from that time Chinese immigration became an important subject of discussion at the annual conventions of the organization. The Dominion authorities paid little heed to these protests and when the British Columbia legislature endeavored to restrict the admission of Orientals and their employment in the province a number of its measures were disallowed by the Dominion Government or declared *ultra vires* by the Supreme Court of Canada.[1]

The trade unions of Manitoba were the next to send a delegate to the Trades and Labor Conference. With the growth of Winnipeg from a population of 241 in 1871 to 7,985 in 1881, unions began to develop in that city. It is said that the tailors of Winnipeg had an association in 1876 but the construction of the Canadian Pacific Railway brought a division of the Brotherhood of Locomotive Engineers in 1881 and a typographical union was organized the same year. For the most part, the artisans who came in the rush of 1881 and 1882 were absorbed in the land boom of the time. The Knights of Labor appeared during the depression of 1884 and an assembly was established. Three other assemblies were organized later, one of which was composed entirely of employees of the Canadian Pacific Railway shops and a district assembly was instituted in 1886. It was instrumental in securing the enactment of the shops act of Manitoba in 1888. The Winnipeg Trades and Labor Coun-

[1] *Cf. infra*, pp. 391, 392, 393, 394-95, 397, 399.

cil was established in 1890. The Council was mainly interested in such municipal labor issues as the early closing of stores and a nine-hour day for civic employees and when these objectives were attained it disappeared. The present Trades and Labor Council of Winnipeg was established in 1894 and the next year it began to participate in the national labor movement by sending a delegate to the Trades and Labor Congress. The Maritime Provinces were directly represented for the first time in 1898.

Despite the broadening of the scope of the Congress it was unable to secure the enactment of any outstanding labor legislation in the slack times of the last decade of the century. But mention must be made of the beginnings of workmen's compensation and of government intervention in industrial disputes.

The first compensation laws were modeled, for the most part, on the British legislation of 1880 and later amended or replaced by laws based on the British act of 1897. Ontario passed the first workmen's compensation act in Canada in 1889, amending it in 1892, 1893, 1897, and 1899. British Columbia passed an employers' liability act in 1891, amended it in 1892, and reconstructed it in 1902. The next measure was that of Manitoba, enacted in 1893, amended in 1895 and 1898. A new law was passed in 1910. A Nova Scotia act of 1900 was replaced by a new law in 1909. The New Brunswick act of 1903 was amended in 1907 and 1908. Alberta passed a law in 1908 and Quebec followed in 1909.[1]

British Columbia (1893), Ontario (1894) and Quebec (1901) passed laws for the promotion of conciliation and arbitration in industrial disputes. This legislation, modeled on a New South Wales statute of 1892, proved of little value.[2]

[1] *Cf. Labour Gazette,* vol. xi, pp. 546, 640, for an account of this legislation.

[2] Margaret Mackintosh, *Queen's Quarterly,* January–March, 1924, p. 298.

In 1886 the Trades and Labor Congress directed attention to "the rapid growth of the city and town populations and the consequent huddling together of large numbers of working people in small and ill-ventilated work shops, and under very imperfect sanitary arrangements."[1] Two years later the Congress noted "the spread of the pernicious sweating system in the tailoring trade in this country,"[2] and in 1891 it was resolved to request the Federal Parliament for a Dominion workshops regulation act, and pending determination of the question of jurisdiction to ask the several provincial legislatures to pass such acts.[3] In 1892, the Ontario Legislature passed "An act for the protection of persons employed in places of business other than factories."

After the Trades and Labor Congress had passed another resolution with respect to the sweating system in consideration of a petition from the garment workers of Toronto, the Dominion Government in 1895 appointed a commissioner "to enquire whether, and if so to what extent, the sweating system is practiced in the various industrial centres of the Dominion." The commissioner found that in the clothing trade of Ottawa, Montreal and Quebec the greater part of the work was done by families in their homes and accordingly the workers were without the protection of the factory laws. He recommended that the factory acts should be extended to all places for the manfacture of articles for sale and that manufacturers should give the inspectors lists of all persons employed. The *Canadian Manufacturer* commented: "Instead of extending his investigations in the matter over a period of ninety days, Mr. Wright could have given it full consideration and made his report in less than ninety minutes. His answer could have been made in these three words—

[1] *Trades and Labor Congress*, 1886, p. 30.

[2] *Ibid.*, 1888, p. 22.

[3] *Ibid.*, 1891, p. 14.

'Increase the duty.'" [1] In 1900 the Ontario Legislature revised the law in the direction of the commissioner's recommendations.

The proceedings of the Congress in the early nineties expressed dissatisfaction with the results of lobbying at Ottawa, Toronto and Quebec and for a time independent political action was considered. The organization came to the end of this period conscious of the loss of much of its protection against the law of conspiracy in 1886 and of the right of peaceful picketing in 1892. But in Nova Scotia the Provincial Workmen's Association was gratified with its success in the legislative field. In 1896 the grand secretary said, "The legislation affecting the proper conduct and management of our mines is ahead of that of any English-speaking country." [2]

At last the tide of depression began to ebb. The per capita value of Canada's foreign trade, $47.27 at the crest of the rise in 1883, was only $40.43 in 1895, when it began to mount again. In the period 1900-1913 over two billions of dollars of British capital were poured into the country. The gross value of manufactured products was increased two and one-half times, the railway mileage and the per capita value of foreign trade were doubled, the annual immigration was multiplied by ten, and two and one quarter millions were added to a population of 5,322,000 at the beginning of the century. The West was opened, the provinces of Saskatchewan and Alberta were established in 1905, the population of Winnipeg was more than trebled, that of Vancouver was quadrupled, while cities of 40,000 and 50,000 people, such as Calgary, Edmonton and Regina, developed from hamlets on the prairie.

The labor movement immediately began to gain strength,

[1] *Canadian Manufacturer*, April 3, 1896, p. 277.

[2] *Provincial Workmen's Association, op. cit.*, 1896, p. 308.

membership in the Trades and Labor Congress rising from about 8,000 in 1900 to 80,000 in 1913. By 1900 there were trades councils in Toronto, London, Ottawa, Brantford, Hamilton, Vancouver, Victoria, Quebec, Winnipeg and Halifax, and soon provincial executives of the Trades and Labor Congress were functioning in the majority of the provinces, being received in formal interview by the provincial governments annually for the presentation of the recommendations of the Congress. The central executive followed the same plan with the Dominion Government and from 1903 to 1910 the Congress maintained a legal representative at Ottawa in the person of J. G. O'Donoghue, son of D. J. O'Donoghue, one of the founders of the organization. The influence of the Knights of Labor had been waning in the Congress and by the end of the century they were no longer a factor of any importance. In the Maritime Provinces the Provincial Workmen's Association considered itself the strongest single trade union in the country.[1]

In 1898 the Congress adopted a Platform of Principles. Several of the planks were taken from the legislative program of the Knights of Labor [2] while a clause on the exclusion of Chinese evidenced the influence of British Columbia unions. A demand for the abolition of the property qualification for public offices and other electoral reforms indicated that the Canadian labor movement had not entirely emerged from the Chartist stage of development. A clause on tax reforms gave evidence that the Congress was still influenced by the Henry George philosophy which it had officially accepted a decade before, the Congress of 1889 having resolved that

it expresses approval of the Henry George land reform system, and resolves to take all lawful measures for the promotion of

[1] *Ibid., op. cit.*, p. 329.

[2] *Cf. supra*, pp. 73-74.

land nationalization by the means of the taxation of land to its full annual rental value, irrespective of improvements; and further that we call upon the farmers of this country—our co-workers—to aid us in our endeavors to thus lighten the taxation of labor, and place public burdens upon the almost untaxed fruits of the land speculator.[1]

The platform read as follows:

1. Free compulsory education.
2. Legal working day of eight[2] hours and six days to a week.
3. Government inspection of all industries.
4. The abolition of the contract system on all public works.
5. A minimum living wage, based on local conditions.
6. Public ownership of all franchises, such as railways, telegraphs, waterworks, lighting, etc.
7. Tax reform, by lessening taxation on industry and increasing it on land values.
8. Abolition of the Dominion Senate.
9. Exclusion of Chinese.
10. The union label to be placed on all manufactured goods, where practicable, and on all government and municipal supplies.
11. Abolition of child labor by children under fourteen years of age; and of female labor in all branches of industrial life, such as mines, workshops, factories, etc.
12. Abolition of property qualification for all public offices.
13. Voluntary arbitration of labor disputes.
14. Proportional representation with grouped constitutencies and abolition of municipal wards.[3]
15. Direct legislation through the initiative and referendum.
16. Prohibition of prison labor in competition with free labor.[4]

[1] *Report Ontario Bureau of Industries, op. cit.*, 1892, p. 106.

[2] Changed to six hours by the 1917 Congress and so stood until the 1921 revision.

[3] "Compulsory vote" was later prefixed to this article.

[4] "Equal suffrage for men and women over twenty-one years of age" was adopted in 1914 but was omitted in the 1921 revision, because obtained.

Throughout this period of Canada's greatest prosperity, the Trades and Labor Congress feared a flooding of the labor market by the tremendous increase in immigration. Their attitude was that of the Canadian Labor Union during the good times of the early seventies when that body resolved that we " view with alarm the gigantic proportions assumed by the immigration movement of late and consider it a question of paramount importance to the working classes of this country, inasmuch as they are taxed to import workingmen of all trades and callings to compete with them in an already overcrowded labor market." [1] Resolutions of the Congress in this latter period were of quite the same character [2] and during these boom years the Congress gave more attention to restriction of immigration than to any other single topic. As early as 1890 [3] the Congress officially disapproved the importation of alien laborers under contract and in Nova Scotia the Provincial Workmen's Association petitioned the Government on the subject.[4] Largely as a result of the representations of these bodies the Alien Labor Act was passed by the Dominion Government in 1898. This measure was directed at the United States as it forbade the importation under contract of persons resident in countries that had similar legislation with respect to the importation of workers from Canada. The law disturbed the Canadian Manufacturers' Association. They declared that while " no Canadian organization is more patriotic in the employment of labor than this Association," manufacturers sometimes suffered because they were unable to import skilled labor not available in Canada.[5] The Association successfully opposed a bill intro-

[1] *Report Ontario Bureau of Industries, op. cit.*, 1886, p. 67.

[2] *Labour Gazette*, vol. iv, p. 327.

[3] *Trades and Labor Congress*, 1890, p. 33.

[4] *Provincial Workmen's Association, op. cit.*, 1895, p. 305.

[5] *Industrial Canada*, September, 1902, p. 89.

duced into the House of Commons by Ralph Smith, who was then president of the Trades and Labor Congress, to transfer the power to investigate and punish violations of the act from the Department of Justice to the Department of Labor.[1] In 1903 the Association failed in an effort to have the act abrogated or amended to meet its views.[2]

But the law did not interfere with contract labor from other countries and the Congress and the Trades Councils protested frequently against misrepresentation abroad of conditions in Canada and importation of workers under contract by employers and employment agents from Great Britain and Continental Europe [3] largely as a result of the efforts of the Congress and of an investigation into the immigration of Italian laborers to Montreal,[4] Parliament passed in 1905 a law respecting false representations to induce or deter immigration to Canada.[5]

In 1906 Mr. W. L. Mackenzie King, then Deputy Minister of Labor, investigated alleged fraudulent practices in England which had induced a large number of printers to come to Canada during the previous winter to fill the places of printers on strike in Winnipeg. His report was forwarded to London with the request that the British Parliament should enact legislation similar to that passed in Canada the year before.[6] Later, at the request of the executive of the Congress, Mr. King went to England to present the Canadian Government's views in the matter to the British authorities.[7]

[1] *Industrial Canada*, September, 1902, p. 89.

[2] *Ibid.*, October, 1903, p. 131.

[3] *Labour Gazette*, vol. iv, p. 326; vol. vi, p. 737; vol. viii, p. 398.

[4] *Report of the Royal Commission on Immigration of Italian Labourers to Montreal and the Alleged Fraudulent Practices of Employment Agencies*, 1905.

[5] *Labour Gazette*, vol. vi, p. 1346.

[6] *Ibid.*, vol. vii, p. 161.

[7] *Ibid.*, vol. vii, p. 291.

In 1907 the Trades and Labor Congress decided that as the Canadian Manufacturers' Association had established a labor bureau in Great Britain " with a view to increasing the surplus labor in Canada," the Congress should appoint a labor agent for Great Britain for the purpose of stopping misrepresentation to British workmen.[1] This step was taken and in 1909 the committee on immigration reported that " we believe that the work of education carried on during the past two years in Great Britain has been productive of much good." [2]

The tide of immigrants gave rise to a horde of employment agents and their malpractices in dealings with the newcomers led the Congress to urge the abolition of private employment agencies and the establishment of public employment offices.[3] When a scheme of Imperial labor exchanges was mooted, the Congress resolved in 1910 that: " No scheme of Imperial Labor Exchanges can possibly be agreed to, which is not preceded by a system of provincial and Dominion exchanges which would have to satisfactorily demonstrate their usefulness and their futher inability to supply any legitimate demand within the confines of the Dominion." [4] Accordingly, Sir Wilfrid Laurier, speaking at the Imperial Conference in 1911, said: " We in Canada would not view with favor such a system of exchanges." [5]

The demand for better employment facilities led to the appointment of a few part-time employment agents by the Ontario Government in the brief depression of 1907-8 and the placing of an " Act respecting the establishment of employment bureaux for workmen " on the statutes of the

[1] *Ibid.*, vol. viii, p. 428.

[2] *Ibid.*, vol. x, p. 467.

[3] *Trades and Labor Congress*, 1910, pp. 26-27; 1911, pp. 86-87.

[4] *Ibid.*, 1910, p. 74.

[5] *Ibid.*, 1911, p. 17.

province of Quebec in 1910. In 1913, at the beginning of the pre-war unemployment crisis, Honorable T. W. Crothers, Minister of Labor, secured the adoption of regulations under the Immigration Act designed to safeguard immigrants in their relations with employment agencies.[1]

The constant representations of the Trades and Labor Congress on the subject of Oriental immigration were a major influence in the appointment by the Dominion Parliament in 1901 of a Royal Commission on Chinese and Japanese Immigration. On the recommendation of this commission the capitation tax for Chinese was raised from one hundred to five hundred dollars. The Japanese Treaty Act of 1906 regulated Japanese immigration but in 1907 the Congress protested that its continuance meant "the depopulation of British Columbia of white people and possibly the loss of that province altogether to the Dominion of Canada."[2] The Congress favored the total exclusion of all Oriental workers and strongly urged this view upon the Government year after year up to the outbreak of the war.[3]

The Dominion Parliament passed an imposing list of labor laws during this period in addition to its measures for the regulation and protection of immigration. In the nineties the Trades and Labor Congress had been protesting against the sweating system and after an investigation by Mr. W. L. MacKenzie King into the manner in which government clothing contracts were carried out, anti-sweating regulations were adopted for inclusion in all such contracts of the Post-Office Department. The Militia Department adopted the plan soon afterward. In 1900 an act for the protection of

[1] Bryce M. Stewart, "The Employment Service of Canada," *Bulletin No. 32 of the Departments of History and Political and Economic Science in Queen's University*, pp. 1-5.

[2] *Labour Gazette*, vol. viii, p. 429.

[3] *Ibid.*, vol. xiii, p. 357; vol. xiv, p. 443.

the health of employees on public works in areas outside provincial boundaries was passed and the Dominion fair wage clause, which provided that the wages current in the district should be paid on all government works, was adopted. A Conciliation Act of the same year, modeled on the English law, provided for a Department of Labor, for labor statistics and the publication of the *Labour Gazette*. It authorized a system of conciliation boards for the adjustment of industrial disputes under the supervision of the Minister of Labor, but no boards have been established under this measure. The Railway Disputes Act of 1903 authorized the Minister of Labor to establish conciliation boards in labor disputes on railways at the request of either party to the dispute or of a municipality concerned therein. Only one dispute had been referred for adjustment under this act before its consolidation with the Conciliation Act in 1906, the consolidated statute being known as the Conciliation and Labor Act. The well-known Industrial Disputes Investigation Act[1] was passed in 1907, after a coal strike that caused a midwinter fuel famine in the Prairie Provinces.

At different times in the last decade of the century the Trades and Labor Congress went on record as being in favor of a Dominion Sunday observance law. In 1901 the Congress appointed a committee to cooperate with the Lord's Day Alliance to that end and in 1906 the Lord's Day Act was passed by the Dominion Parliament.[2]

But there was no such success with the eight-hour day. Just as the Canadian Labor Union took up the prevailing demand for a nine-hour day in the seventies, so in the next decade the Trades and Labor Congress promoted a campaign for the eight-hour day and it was established in some

[1] *Cf. infra*, p. 168.

[2] *Cf. infra*, pp. 272-74.

branches of Dominion Government work in 1896. While Alphonse Verville, president of the Congress, and Ralph Smith, an ex-president, were members of Parliament in the first decade of the century they introduced bills on the subject in different sessions of the House. A select committee on the subject was appointed in 1908 but the Canadian Manufacturers' Association offered strong opposition and no legislation was passed.[1]

The Provincial Workmen's Association urged the enactment of an eight-hour day law upon the Nova Scotia legislature. The subject was referred to a commission and again the Manufacturers' Association was actively opposed. The commission's report was unfavorable and the legislature did not act.

The expansion of industry in this period prompted discussion of technical education, a subject which had been considered by the Trades and Labor Congress during the rise of manufactures in the eighties.[2] Commissions on technical education, appointed by the Dominion Government in 1909 and Manitoba in 1910, had officials of the Congress as members. The report of the Dominion Commission, submitted in 1913, gave rise to a federal law on the subject in 1919.[3]

There was a marked development of provincial labor legislation in these years. With the opening of the West to settlement came the factory acts of Manitoba (1900), British Columbia (1908) and Saskatchewan (1909); the establishment of the eight-hour day in the mines of British Columbia[4] (1899) and Alberta (1908); and the provisions for fair wages on government contracts in British Columbia (1900) and Manitoba (1907). Ontario granted the eight-hour day

[1] *Cf. infra*, p. 234.

[2] *Report Ontario Bureau of Industries, op. cit.*, 1893, p. 17.

[3] *Cf. infra*, p. 101.

[4] Metal mines only; in coal mines in 1903-4 (c. 38).

in mines in 1913. In this time of growing cities, laws for the protection of workers on buildings were enacted in Quebec (1908), Ontario (1911), Manitoba (1912) and Saskatchewan (1912). In the Maritime Provinces factory laws were enacted in Nova Scotia (1901) and New Brunswick (1905). Just at the close of the period Ontario investigated the subject of workmen's compensation and a new era in compensation for accidents for the whole country was inaugurated by the Ontario Workmen's Compensation Act of 1914.

In the meantime the Provincial Workmen's Association was giving a good account of itself in Nova Scotia. In 1897 the Association was disrupted by the company-stores issue and an invasion by the Knights of Labor. But the Association was reorganized in 1898, defeated the Knights of Labor, secured a general advance in wages in 1900 and went on to new gains in the Nova Scotia Legislature. Among these, better examination provisions were secured for underground managers, shotfirers and stationary engineers; liens on mining properties gave some guarantee of the payment of wages; retention of wages at company stores for debts was restricted; the weekly payment of wages was provided for and more satisfactory regulations with regard to safety lamps were enacted. To combat the invasion of Italian and other alien workers it was provided in 1914 that certain supervisory positions could be held only by British subjects with a stated minimum of experience in coal mining. About 1908 the Association became involved in a struggle with the United Mine Workers of America for supremacy in the Nova Scotia coal fields and in 1917 it united with that organization.

The expansion in railway traffic and the bringing into operation of two new transcontinental railways greatly increased the membership of the railway brotherhoods in these years and in 1924 railway employees constituted 28.8 per

cent of the total union membership of the country. It became the practice of some of the brotherhoods to establish legislative boards for the protection of their interests in railway legislation, Dominion and provincial, and in decisions of the Board of Railway Commissioners and to maintain representatives at Ottawa. These bodies have cooperated in the legislative efforts of the Trades and Labor Congress from time to time but their attention has centered mainly in the railway laws and regulations which immediately concern them.

But the advance on labor's legislative front in the period 1900-1913 was checked in one important sector despite the spectacular increase in trade-union membership. The Trades and Labor Congress was unable to recover the protection against the law of conspiracy, of which the unions were deprived in 1886, and the right of peaceful picketing, lost in 1892. For the most part it was on the defensive.

In 1900 it was found that the Department of Justice had given an opinion that the anti-combines sections of the Criminal Code [1] encroached on the exemption from the law of conspiracy granted by the Trade Unions Act in 1872. The Congress undertook to secure specific legal exemption from the combines legislation but met strong opposition from the Senate—a body whose abolition had shortly before been accepted as one of its objectives. The desired legislation was passed but only after the Senate had been appeased with a measure which made the combines sections of the Criminal Code less restrictive upon manufacturers.[2] This was the beginning of a ten-year struggle in which the Senate carried the war to the Congress. During these years the Senate sought to impose further restrictions upon picketing, and

[1] *Cf. infra*, p. 136.

[2] *Cf. infra*, p. 114.

tried repeatedly to prevent American leaders of international unions taking part in trade disputes in Canada.[1]

The Taff Vale decision in 1901 brought the unions under serious legal disabilities. Judges began to treat peaceful picketing as illegal, injunctions became frequent in labor cases and the labor movement was harassed by a number of damage suits. Frequent appeals were made to the Dominion Government and the provincial executives urged the legislatures to pass remedial legislation, but British Columbia alone responded.[2] The bend in Labor's line when it entered this era of prosperity remained unstraightened at its close and its position on this front was weakened by a number of adverse legal decisions which supplied dangerous precedents for the years to come.

The centrifugal forces that so often develop in labor organizations in prosperity may have contributed to this condition. After the Knights of Labor were banished from the Trades and Labor Congress in 1902, they organized as the National Trades and Labor Congress, a name which was changed to the Canadian Federation of Labor in 1908. This body opposed the international unionism of the Trades and Labor Congress and favored the Senate's proposals to exclude the American leaders of international unions from Canada during trade disputes. The membership of this group, now about 17,000, has not permitted it to seriously dispute the field with the Congress.

In 1901 the shoeworkers' union of Quebec accepted the social doctrine of the Roman Church and some years later La Fédération Ouvrière Mutuelle du Nord was established as a labor union confined to Roman Catholic workers. It was incorporated under the laws of Quebec in 1912. A

[1] *Cf. supra*, pp. 139, 141.

[2] *Cf. supra*, p. 137.

137202

number of other unions of this character were established in the province of Quebec in these years.

The labor movement of Canada achieved notable legislative triumphs in the years of war and reconstruction. Recruiting and war orders soon brought recovery from the depression. Trade-union membership, which had declined from the high record of roughly 175,000 in 1913 to 140,000 in 1915 rose to the unprecedented figure of 375,000 in 1919, during the flush employment of the war years. The percentage of trade unionists unemployed, which was eight per cent at the end of 1915, when the official record was begun, fell to half of one percent in the summer of 1918.

Early in the war period, labor began to assert itself. Industrial disputes, which in 1915 had been at the lowest figure of the record, doubled in number in 1916 and in 1919 the number of disputes and the time-loss were far the greatest in the history of the Department of Labor. Again the tide of labor legislation was in flow. In the provinces remarkable gains were made in three important fields—workmen's compensation, minimum wages and fair wages. In 1915 Nova Scotia adopted the Workmen's Compensation Act of Ontario and then followed British Columbia (1916), Manitoba (1916), the Yukon (1917), Alberta (1918) and New Brunswick (1918). The minimum wage laws began in the West, where the comparitively few manufacturers could not offer serious resistance—Alberta (1917), British Columbia (1918), Manitoba (1918), Saskatchewan (1919), Quebec (1919), Ontario (1920) and Nova Scotia (1920). Manitoba passed the Fair Wage Act of 1916. The growth of industry in Alberta led to the enactment of a factory act in that province in 1917. Mainly as a part of a Dominion-wide program for the better control of the labor market during the period of demobilization and reconstruction, operation of private employment agencies was forbidden by law in

Alberta, British Columbia and Saskatchewan (1919), Nova Scotia (1920) and Manitoba (1923). Provision was also made in this period by all the provinces except Prince Edward Island for the maintenance of public employment offices.

As its share of the same program, the Dominion Government passed the Employment Offices Coordination Act (1918) which provided for subventions to provincial employment offices and their interlocking in a national employment service. When the Employment Service of Canada was established under this legislation, the Congress exercised its right to appoint two representatives to the Employment Service Council of Canada, an advisory body for the Service, and has urged that the Employment Service should have some share in the control and direction of immigration.

During the war the Congress resumed its campaign for the eight-hour day. Resolutions in favor of the forty-four hour week were adopted and in 1917 the eight-hour day plank in the platform of the Congress gave way to a six-hour plank. But in 1921 the Congress reverted to its former position on the subject and with the insertion of the eight-hour day clause in the Labor Section of the Treaty the Congress again pressed for legislation and in 1923 British Columbia broke new ground by enacting a general eight-hour day law to come into effect January 1, 1926.

In 1919 the Dominion Parliament took action on the report of the Commission on Technical Education, submitted in 1913, and passed the Technical Education Act, which provided that ten million dollars should be distributed to the provinces during the ensuing ten years to aid them in their technical education work.

The "War Labour Policy," declared by the Dominion Government July 11, 1918 and urged upon employers and working people for the period of the war, is of interest as

indicating what conditions the government then considered "fair and equitable to all concerned." The policy contained two of the clauses in the platform of principles of the Trades and Labor Congress as it stood in 1918—those providing for a minimum wage and equal pay for equal work for men and women. These two clauses of the declaration and one other—the right of association for employers and employed—are also found in the Labor Section of the Treaty. The official statement of this policy was:

1. That there should be no strike or lockout during the war.
2. That all employees have the right to organize in trade unions, and this right shall not be denied or interfered with in any manner whatsoever, and through their chosen representatives should be permitted and encouraged to negotiate with employers concerning working conditions, rates of pay, or other grievances.
3. That employers shall have the right to organize in associations or groups, and this right shall not be denied or interfered with by workers in any manner whatsoever.
4. That employers should not discharge or refuse to employ workers merely by reason of membership in trade unions or for legitimate trade-union activities outside working hours.
5. That workers in the exercise of their right to organise shall use neither coercion nor intimidation of any kind to influence any person to join their organizations or employers to bargain or deal therewith.
6. That in establishments where the union shop exists by an agreement the same shall continue and the union standards as to wages, hours of labour and other conditions of employment shall be maintained.
7. That in establishments where union and non-union men and women now work together, and the employer meets only with employees or representatives engaged in such establishments, the continuance of such conditions shall not be deemed a grievance.

This declaration, however, is not intended in any manner to deny the right or discourage the practice of forming labour unions, or the joining of the same by workers in said establishments as aforesaid, nor to prevent a Board of Conciliation or other body or adjuster from recommending improvements in the matter of wages, hours of labour, or other conditions, as shall from time to time be found desirable.

8. That established safeguards and regulations for the protection of health and safety of workers shall not be relaxed.

9. That all workers, including common labourers, shall be entitled to a wage ample to enable them with thrift to maintain themselves and families in decency and comfort, and to make reasonable provision for old age.

10. That in fixing wages, minimum rates of pay should be established.

11. That women on work ordinarily performed by men should be allowed equal pay for equal work and should not be allotted tasks disproportionate to their strength.

12. That in all cases where eight hours is by law or agreement the basic day, it shall so continue. In all other cases the question of hours of labour should be settled with due regard to governmental necessities and the welfare, health and proper comfort of the workers.

13. That a maximum production from all war industries should be sought and methods of work and operation on the part of employers or workers which operate to delay or limit production or which tend to artificially increase the cost thereof should be discouraged.

14. That for the purpose of mobilizing the available labour supply with a view to its rapid and effective distribution as well as constant employment, the managers and operators of industrial establishments and the trade unions concerned should keep provincial and municipal employment agencies and the Canada Registration Board fully informed as to labour required or available. Those agencies should be given opportunity to aid in the distribution of labour.

15. That in fixing wages, hours and conditions of labour

regard should be had to the labour standards, wage scales, and other conditions, prevailing in the locality affected, always mindful, however, of the necessity of payment of living wages.

16. That to better preserve industrial peace during the war, employers and employees should, after once establishing an agreement as to wages and working conditions, agree to its continuance during the war, subject only to such changes in rates of pay as fluctuation in cost of living may justify.

17. That when employers and employees are unable to arrive at a mutual agreement concerning any existing dispute, unless some other means of settlement is agreed upon by the parties, they should use the machinery provided for in the Industrial Disputes Investigation Act in an endeavour to reach an adjustment.

Should the recommendation of the Board of Conciliation not be accepted either party may appeal to the Board of Appeal, who shall review the findings of the Board of Conciliation and hear such further evidence as either party to the dispute may desire to submit at their own expense, the decision of the Board of Appeal to be final.

Any settlement of a dispute referred to the Board of Conciliation, or carried in appeal to the Board of Appeal, shall be effective not later than the date on which the application for a Board of Conciliation was filed.

The Board of Appeal shall be composed of two representatives of labour nominated by the Executive Council of the Trades and Labour Congress of Canada, two representatives of the employers, nominated by the Executive of the Canadian Manufacturers' Association, and a Chairman nominated by the said members of the Board, or, in case of failure to agree upon a Chairman, then the Minister of Labour shall appoint such Chairman.

The Minister further recommends that the Minister of Labour be authorized to make regulations governing procedure on appeal provided for by paragraph 17 of the above recommendations.[1]

[1] P. C. 1743. Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 11th July, 1918.

It would appear that the Dominion Government was chiefly concerned over the no-strike or lockout clause of this policy for the Board of Appeal provided for in paragraph 17 was organized without delay and Railway Board of Adjustment, No. 1, was established for the consideration of matters in dispute between the railways and their train service employees.[1] Finally, on October 11, 1918, the government passed a further order-in-council forbidding strikes and lockouts for the duration of the war.[2] Earlier in the year an "anti-loafing" order had been issued which required, with certain exceptions, that every male person residing in the Dominion should be regularly engaged in some useful occupation.[2]

Other orders-in-council, issued between the declaration of the "War Labour Policy" and the Armistice, prohibited the use of fourteen languages and declared fourteen specified organizations unlawful. Any association that tried to effect any governmental, political, social, industrial or economic change by the use of force or by threats, or which defended the use of force, was to be considered unlawful—a regulation that was enacted as a law in 1919. It was made a punishable offense to hold or attend meetings, religious services excepted, conducted in the language of any enemy country or in the Russian, Ukranian or Finnish languages. The Dominion Government declared the Industrial Workers of the World unlawful in September, 1918, but after the Criminal Code was amended to cover illegal associations the ban was lifted in April, 1919. The organization had shown some activity in Western Canada, especially in British Columbia, before the war but its Canadian membership has never been large and as it proceeds by direct industrial action rather than by legislation, it is not here considered. The

[1] *Labour Gazette*, vol. xviii, p. 618.

[2] *Ibid.*, p. 983.

One Big Union, which was organized in Western Canada in the spring of 1919 and was said to have a membership of about 40,000 at the end of the year is not now an important factor in the Canadian labor movement.

The unions also encountered restrictions from the courts. The issuance of injunctions in labor disputes, which had been known in Ontario in the pre-war boom years, was resumed at Winnipeg in the full employment of the war. In 1917 the Vulcan Iron Works, the Manitoba Bridge and Iron Works and other firms were granted injunctions restraining their striking employees from picketing and the strikes failed. Mr. Justice Mathers of Manitoba pronounced emphatically against peaceful picketing. At the request of the Winnipeg Trades and Labor Council the executive of the Congress made several attempts to secure from the Dominion Government an amendment to the Criminal Code that would restore the right of peaceful picketing, but without success. The Dominion and some of the provincial governments to which the Congress executive applied, also refused to enact anti-injunction legislation.[1]

In the spring of 1919 the above-mentioned firms and others refused to negotiate with the Metal Trades Council of Winnipeg, which was demanding certain wage increases and a forty-four hour week. A strike which began on May first developed into the most serious labor upheaval in the history of the country. It soon became a general strike of about 27,000 employees in Winnipeg and by the end of the month general strikes were in progress in Winnipeg, Brandon, Calgary, Edmonton, Saskatoon, Regina and Prince Albert with other sympathetic strikes at various points.[2] The

[1] *Cf. infra*, p. 150.

[2] *Labour Gazette*, vol. xix, pp. 683, 789, 1207, 1213.

strike terminated June 26, after a number of the leaders were arrested on a charge of seditious conspiracy.

While the dispute was in progress, the Dominion Government passed an amendment to the Immigration Act, which included in the classes prohibited from entering the country persons opposed to organized government or who advocated the overthrow by force or violence of the government of Canada or the unlawful destruction of property, and members of any association holding such beliefs. It was provided that any such persons not British subjects should be liable to deportation. A bill to except British subjects from the provision excluding persons advocating the overthrow of government by force was introduced in the House of Commons in 1923 but it was rejected by the Senate. Parliament also repealed in 1919 Section 133 of the Criminal Code which enumerated certain acts not to be considered seditious.

In 1920 the Congress obtained an opinion from its solicitor with regard to picketing, injunctions, sedition and other matters and a campaign was begun for the reinsertion of the "peaceful picketing" clause in the Criminal Code, repeal of the section on seditious offences, definition of "sympathetic strikes" and reconsideration of the amendments passed during the "panicky session" of Parliament, 1919, but this effort has been of no avail and cases involving injunctions and restraint of peaceful picketing have continued to develop.

But there were also constructive tendencies during the last year of the war. The Dominion Cabinet appointed a Reconstruction and Development Committee which established a sub-committee charged with the duty of recommending policies and measures to be adopted in respect of labor problems, both during the war and in the reconstruction period. The president of the Trades and Labor Congress and the legislative representative of the Brotherhood of Loco-

motive Engineers were appointed as members.[1] On recommendation of this body a Royal Commission on Industrial Relations was appointed in April, 1919, Mr. Tom Moore, recently chosen president of the Trades and Labor Congress, being one of the two labor members. The Commission summarized its conclusions as follows:

> We recommend that legislation be enacted to provide for: (a) fixing of a minimum wage, specially for women, girls, and unskilled labour; (b) maximum work day of eight hours and weekly rest of not less than twenty-four hours.
>
> We recommend immediate enquiry by expert boards into the following subjects, with a view to early legislation: (a) state insurance agains unemployment, sickness, invalidity and old age; (b) proportional representation.
>
> We recommend that suitable action be taken by the Government to: (a) regulate public works to relieve unemployment; (b) help the building of workers' homes; (c) establish a bureau for promoting industrial councils; (d) restore fullest liberty of freedom of speech and press.
>
> Other general recommendations are: (a) right to organize; recognition of unions; (b) payment of a living wage; (c) collective bargaining; (d) extension of equal opportunities in education; (e) steps towards establishment of joint plant and industrial councils; (f) that the findings of the Commission be put into effect in all work controlled by the Government where the principles of democratic management can be applied.[2]

The Commission recommended that if it should be decided that the Dominion Parliament did not have power to enact legislation to give effect to its recommendations, a National Industrial Conference representing the provincial governments, employers and employees should be called. The government summoned the conference to meet September

[1] *Labour Gazette*, vol. xix, p. 562.

[2] *Royal Commission on Industrial Relations, Canada*, 1919, p. 19.

15, 1919 to consider industrial relations and labor laws and the Labor Section of the Treaty of Peace. The recommendations of the conference included suggestions for securing greater uniformity in labor laws, the promotion of industrial councils, enquiry into state insurance against unemployment, sickness, invalidity and old age, investigation and, if found necessary, the enactment of minimum wage laws for women and children in the provinces without such legislation, provision for public works during post-war unemployment, the centralization of labor supply and demand in the Employment Service of Canada and continuous study of the employment situation. The committees, which in each case were representative of employers, employees and the public, were unable to agree on joint reports on the eight-hour day, the right of association, recognition of trade unions, the right of collective bargaining and the application of the findings of the Royal Commission to government employees.[1]

Soon after the Armistice a joint memorandum of suggestions for the reconstruction period was submitted to the government by representatives of the Canadian Manufacturers' Association, the Trades and Labor Congress of Canada and a Joint Committee of Technical Organizations. The memorandum dealt with such subjects as immigrtion, technical education, employment offices, demobilization, land settlement and scientific research.[2] Another constructive effort was the passing of the Industrial Conditions Act of Manitoba (1919, c.43) which authorized the appointment of an Industrial Council with a view to the promotion of better industrial relations in the province. There was promise for a time that under this law trade unions would be given the legal status they hold under the British Trade Disputes Act[3] but this came to naught.

[1] *Labour Gazette*, vol. xix, p. 1172.

[2] *Ibid.*, vol. xviii, p. 1102.

[3] *Cf. infra*, p. 151.

The war gave a new impetus to labor's participation in political life. The executive of the Trades and Labor Congress suggested at the 1917 convention that Canadian trade unions should organize a labor party after the British plan. This suggestion was adopted and the Canadian Labor Party was established. Canadian unions achieved their greatest political success in 1919, when eleven labor candidates were elected to the Ontario Legislature, two of whom were appointed to cabinet positions in the Farmer-Labor Government then established. Only four labor candidates were elected to the legislature of Ontario in the next election in 1923 when a Conservative Government was returned. In the Dominion Government, Senator G. D. Robertson, vice president for Canada of the Order of Railroad Telegraphers, was appointed Minister of Labor in 1918, being the first member of a labor organization to hold that position. Two labor candidates were elected to Parliament in 1922 and while one of them was defeated in the election of 1924, labor's small representation was maintained by the election of a new member. Mr. J. S. Woodsworth, who was returned in both elections, has energetically advanced labor's cause in the House.

With labor taking more interest in politics the question of union contributions to the expenses of labor candidates arose, as in England a decade before. In an English case before the House of Lords it was ruled that unions were limited to the activities indicated in the legal definition of the term "trade union." The Trade Union Act of 1913 released labor organizations from the restrictions of this decision. In Canada the unions encountered legislation prohibiting such contributions. By an amendment to the Elections Act in 1920, the Dominion Government made it illegal for any association not incorporated for political purposes to contribute to the expenses of any political candidates or party under penalty of a fine not exceeding one thousand dollars or to imprisonment not exceeding two years or both.

Early in the post-war period the Trades and Labor Congress took stock of its objectives and in 1921 the incoming executive council was instructed to amend the platform of principles "so as to harmonize with the decisions reached during the past few years." This statement, which has not been amended, is as follows:

(1) Free education and compulsory school attendance. (2) Maximum legal working day of eight hours and forty-four hours per week. (3) Insertion and enforcement of fair-wage regulations (based on established union conditions) in all government work, direct and indirect. (4) Public ownership and democratic management of all public utilities. (5) Government control and fullest development of all natural resources. (6) Establishment of a Tariff Board on which labor will be fully represented. (7) Revenue by direct taxation. (8) Abolition of non-elective legislative bodies. (9) Exclusion of all Asiatics. (10) The demand for, and use of, the union label. (11) Prevention of employment of children under sixteen years of age.[1] (12) Equal pay for equal work for men and women.[1] (13) Voluntary arbitration of labor disputes. (14) Proportional representation with group constituencies. (15) The encouragement of the establishment of workers' cooperative societies. (16) Unemployment insurance. (17) Old age pensions, state insurance for sickness and disability. (18) Uniformity of labor laws throughout the Dominion. (19) Disarmament.

In 1922 Canada's financial contribution towards the maintenance of the League of Nations and the International Labor Organization was reduced. The *Canadian Congress Journal* refused "to believe that this policy reflects the desires of the people of this country" and discovered a "considerable indifference on the part of the government towards this treaty obligation."[2] While the Canadian Manufacturers' Associa-

[1] Adopted in 1915.

[2] *Canadian Congress Journal*, July 1922, pp. 362, 363.

tion resolved to oppose some of the conventions vigorously,[1] the Congress constantly urged the Dominion and provincial governments to give effect to the draft conventions and recommendations [2] and proposed a conference of the Dominion and the provinces in the matter. Conferences were held in 1922 and 1923. In 1922 Mr. Tom Moore, president of the Trades and Labor Congress, was elected to the governing body of the International Labor Organization as a workers' representative and his influence has been exerted for greater recognition of its proposals.

In 1925 the Dominion Government ratified four of the draft conventions with regard to seamen adopted at the Genoa Conference in 1920 and the Geneva Conference in 1921. In the provinces first steps toward ratification have been taken by British Columbia, Nova Scotia, Saskatchewan and Manitoba. Since the war the Trades and Labor Congress has been pressing for a system of old age pensions [3] and it has also had a part in the movement for greater uniformity in the labor laws of the different provinces.

[1] *Labour Gazette,* vol. xxi, p. 803.

[2] *Ibid.,* vol. xxi, p. 292; vol. xxii, p. 971; vol. xxiii, p. 1096.

[3] *Ibid.,* vol. xxii, p. 971; vol. xxiii, p. 1089; vol. xxiv, p. 855; vol. xxv, p. 172.

# CHAPTER IV

## Labor not a Commodity

The guiding principle above enunciated that labor should not be regarded merely as a commodity or article of commerce. (Treaty of Peace: Article 427, 1.)

Canadian legislation has no such declaration as that in the Clayton Anti-Trust Act of the United States that "the labor of a human being is not a commodity or article of commerce." But the Trade Unions Act of Canada, passed in 1872, provided that

the purposes of a trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise, or so as to render void or voidable any agreement or trust.

The act provided however that this protection should apply only to trade unions registered under its provisions and very few unions have registered. This limited protection was shattered in 1889, when it was stated in the anti-combines law (c. 41) of that year that it should be construed as if this clause of the Trade Unions Act had not been enacted.

The Trades and Labor Congress of 1889, "recognizing the great injury done organized labor," instructed its legislative committee "to lose no time in securing, if possible, such legislation as will give organized labor at least a legal status, of which it has been deprived." [1] The executive com-

[1] *Trades and Labor Congress*, 1889, p. 24.

mittee of the Congress were instructed to use their utmost endeavors to have the anti-union clause of the combines act repealed.[1] Apparently the protests of the unions carried weight for the offensive section was omitted when the criminal laws were consolidated in the Criminal Code of 1892.

In the later nineties the Trades and Labor Congress resolved that the unions should have specified exemption from the anti-combines clauses of the Criminal Code.[2] This resolution became more determined when it was found in 1900 that the Department of Justice had given an opinion that the anti-combines legislation encroached on the exemption from the law of conspiracy granted by the Trade Unions Act of 1872.[3]

Then an interesting struggle between the Liberal House of Commons and the Conservative Senate developed. A government bill, favored by the commercial interests, proposed to restore the words " unduly " and " unreasonably " in their application to restraint of trade in the combines section of the Code and to strike out the word " unlawfully " in its application to conspiracy in restraint of trade and so to reduce the restraints in these matters. A bill on behalf of labor proposed to add to the combines section the clause: " Nothing in this section shall be construed to apply to combines of workmen or employees for their own reasonable protection as such workmen or employees." The proposal was finally passed in 1900 (c. 46) but only after being rejected three times by the Senate and when it was evident that unless the Senators concurred, the bill to relax the provisions on restraint of trade would be rejected by the Commons.

It was not until 1914 that the Clayton Anti-Trust Act purported to give American trade unions immunity from the " combination in restraint of trade " theory in the words:

[1] *Trades and Labor Congress*, 1890, p. 32.

[2] *Ibid.*, 1900, p. 11.

[3] *Cf. infra*, p. 122.

Nothing in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations instituted for the purposes of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws.

While in the United States judicial interpretation has deprived labor of the gains expected under this law, Canadian trade unions have been given special immunity under all subsequent combines legislation. The Combines Investigation Act of 1910 [1] and the Combines and Fair Prices Act of 1919 [2] contained clauses declaring that their provisions in no way affected the Trade Unions Act, and the Combines Investigation Act of 1923 [3] reproduced the clause with reference to non-application to trade unions, inserted in the Criminal Code amendment of 1900.

[1] *Cf. infra*, p. 185.

[2] *Cf. infra*, p. 186.

[3] *Cf. infra*, p. 188.

## CHAPTER V

### Freedom of Association for Employers and Employed

"The right of association for all lawful purposes by the employed as well as by the employers." (Treaty of Peace: Article 427, 2.)

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This in respect to the employed should include agricultural workers on an equal basis with industrial workers (1921 convention).

There has been a very considerable development of association in Canada by both employers and workers, as the Department of Labor's annual reports on *Organization in Industry, Commerce and the Professions* and on *Labour Organization* bear witness. But for the most part, while employers' associations have frequently urged their views with regard to proposed labor legislation upon Parliament and the legislatures, they have been little used for the purposes of industrial relations. Legislation governing trade unions began with a British combination act, copied in Nova Scotia in 1816. Agricultural workers seem to have the same rights of association as industrial workers.[1]

#### FREEDOM OF ASSOCIATION FOR THE EMPLOYED

#### *Conspiracy, Picketing and the Damage Suit*

The common-law doctrine of criminal conspiracy was accepted in the early colonies of British North America and in Nova Scotia it was reenforced by a combination act passed in 1816. But even before this there was legislation to prevent workmen agreeing on wage rates, "An act for restraining the exorbitant price of labour," passed by the

[1] *Cf. supra*, p. 43.

General Assembly of Nova Scotia in 1777 (c. 8), following closely an old Elizabethan statute (1562, c. 4). It required that

as soon as may be, after the first day of July next, the Justices of the Peace in the several Counties in this Province, and in the Townships impower'd by Law to hold Special Sessions, shall meet together at such places where the Sessions of the Peace are usually held, and also within six Months thereafter, taking into Consideration, the circumstances of the times and prices of Provisions, Assess the Wages of all Artificers and Labourers, according to the best of their Judgement for any Labour or Work to be done, by the Day, Week, Month, or Year.

Employers who paid wages in excess of the fixed rate could, on complaint before two justices of the peace, be fined not less than five pounds and not more than fifteen pounds and workers accepting higher wages could be fined not more than forty shillings with a penalty of one month in jail if the fine were not paid. The act was to remain in force for one year and until the end of the session of the General Assembly then next following.

The combination act passed in Nova Scotia in 1816 (c. 27) was entitled " An act to prevent unlawful combinations of master tradesmen, and also of their workmen and journeymen." The five sections of the law were taken practically without change from the English general combination act of 1800 (40 Geo. III, c. 106) which forbade all combinations of journeymen. Both acts also prohibited combinations of employers, but this provision of the law was disregarded in England at least.[1]

According to the preamble of the Nova Scotia act, " great numbers of Master Tradesmen, Journeymen and Workmen,

[1] Sidney and Beatrice Webb, *The History of Trade Unionism* (rev. ed., New York, 1920), p. 73.

in the Town of Halifax, and other parts of the Province, have, by unlawful Meetings and Combinations, endeavoured to regulate the rate of wages and to effectuate other illegal purposes." Accordingly the act declared illegal all agreements between journeymen, workmen or other persons for obtaining increased wages, for lessening or altering hours, for decreasing the quantity of work, for preventing any employer from engaging any one he might choose or for controlling any person in the conduct of his business. The act forbade any such combinations in future and imposed penalties on persons entering into any combinations and on persons persuading workmen not to engage with an employer or to leave his employment or to prevent the employer hiring any worker or to refuse to work with any other workman. Combinations entered into by tradesmen and manufacturers for regulating wages, hours, volume of work, and prices were also declared illegal and penalties provided for on conviction. Provision was made that nothing in this law should be construed to prevent persons combining to raise wages or prices from being indicted for conspiracy or unlawful combination. This act continued in force until 1851.

A law passed in Nova Scotia in 1864 (c. 11), "An act relating to the combination of workmen," is almost a replica of the English statute of 1825 (c. 129)—"Peel's Act," as it was called by the English manufacturers. While this law nominally restored the common law doctrine of conspiracy after the repeal of the combination act, it established the right of collective bargaining by giving exemption to persons meeting solely for the purpose of regulating wages and hours. The law in Nova Scotia provided a penalty of imprisonment, with or without hard labor, for any time not exceeding twelve months, for violence, intimidation, molestation or obstruction with a view to forcing a worker to

leave his employment, or not to accept employment, or to return work before completion; or to join any association, or contribute to any common fund, or to pay any fine for not complying with any rules made to change wage rates or hours of work or the quantity of work; or endeavoring to force any employer to alter the mode of carrying on his business or to limit the number of his apprentices.

It was stated that the act should not apply to persons meeting together only to determine the rate of wages or the price or hours which they should demand or to enter into an agreement on these matters. Accordingly, combination to agree on these matters was criminal conspiracy no longer but the coercive methods used by unions with employers and workers in order to enforce such agreements were penalized with imprisonment. The Fourth Series of the Revised Statutes of Nova Scotia (1873) listed this act as within the jurisdiction of the Parliament of Canada.

The Provinces of Upper and Lower Canada were established by the Constitutional Act of 1791 and in 1800 Upper Canada formally adopted the criminal law of England as it stood on September 17, 1792. In 1872 it was held by a Toronto judge that trade unions were still under English criminal law as adopted in 1792.[1] In 1837 (c. 6) Upper Canada passed "An act to provide more effectually for punishment of certain offences." It provided that persons convicted of conspiracy might be sentenced "to such imprisonment as is now provided by law for any such offence; or if the Court which is to pass sentence on such convict shall see fit, may be sentenced to be imprisoned only, or imprisoned and kept to hard labour."

Upper and Lower Canada were united in the one province of Canada in 1840 and the first parliament of the new province passed in 1841 (c. 27) "An act for consolidating and

[1] *Cf. infra*, p. 121.

amending the statutes in this province relative to offences against the person." Under this law any one who committed an assault in pursuance of a conspiracy to raise the rate of wages might be sentenced to imprisonment for any term not exceeding two years. The offender might also be fined and be required to find sureties for keeping the peace. The same measure provided that

> any person who unlawfully and with force hinders any seaman from working at or exercising his lawful trade, business or occupation, or beats, wounds, or uses violence to him with intent to deter him from working at or exercising the same; . . . may be convicted thereof before two Justices of the Peace, and imprisoned and kept to hard labour in the Common Gaol or House of Correction for any term not exceeding three months.

At Confederation in 1867 the British North America Act assigned the criminal law to the Dominion and civil and property rights to the provinces. This made the trade unions subject to both jurisdictions. Various trade union practices governed by the provisions of the criminal law of the Dominion may be restrained under provincial law by the civil process of injunction.

In 1869 (c. 20) "An act respecting offences against the person," which the federal Parliament brought into force in the new Dominion, amended and consolidated the statute law of Quebec, Ontario, Nova Scotia and New Brunswick on the subject. This measure, which drew largely from the British act relating to offences against the person (1861, c. 100), reproduced two sections of that law of interest to trade unions:

> Whosoever in pursuance of any unlawful combination or conspiracy to raise the rate of wages or of any unlawful combination or conspiracy respecting any trade, business or manufacture or respecting any person concerned or employed therein,

unlawfully assaults any person or *in pursuance of any such combination or conspiracy uses any violence or threat of violence to any person with a view to hinder him from working or being employed at such trade, business or manufacture*[1] is guilty of a misdemeanor and shall be liable to be imprisoned in any jail or place of confinement other than a penitentiary for not less than two years, with or without hard labour.[2]

Whosoever unlawfully and with force, hinders or prevents any seaman, stevedore, ship carpenter or other person usually working at or on board any ship or vessel, from working at or exercising his lawful trade, business or occupation or beats or uses any violence to any such person with intent to hinder or prevent him from working at or exercising the same shall, on summary conviction thereof before two justices of the peace, be liable to be imprisoned and kept to hard labour in any gaol or place of confinement other than a penitentiary for any term, not exceeding three months: provided that no person for any such offence by reason of this section shall be punished for the same offence by any other law whatsoever.

At the time of the printers' strike in Toronto in 1872 Judge Robert A. Harrison, in an opinion prepared for the master printers, stated that Canadian trade unions were under the English law of 1792:

None of the English protecting statutes (5 Geo. IV, c. 95; 6 Geo. IV, c. 129; 22 Vic., c. 34)[3] being in force, I can only come to the conclusion that combinations of workmen in Canada for the following purposes are illegal: (1) to lessen or alter the hours of labor; (2) to obtain an advance in wages; (3) to fix the rate of wages; (4) to decrease the quantity of work; (5) to induce others to separate from their service before expiration of their time; (6) to quit work before the work

[1] Words in italics not in the English act.

[2] Practically same as Nova Scotia, 1864 (c. 9). Five years' imprisonment in Nova Scotia.

[3] *Cf. infra*, p. 119.

is finished; (7) to refuse to enter into work or employment; (8) to persuade others not to enter into employment.[1]

A number of strikers were arrested and the unionists appealed to the Dominion Government. The response was the Trade Unions Act of 1872 (c. 30) which provided that trade unions were not to be judged unlawful merely because they were in restraint of trade. The measure was almost identical with the English law of the previous year but it differed in one important particular, that its protection was to be afforded only to such trade unions as might register with the government in the manner prescribed in the act.

The new measure stated that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise." Nor would the purposes of any trade union by reason merely that they were in restraint of trade be considered unlawful so as to render void or voidable any agreement or trust. It was provided that trade-union contracts for certain purposes, such as an agreement between union members concerning the conditions on which any members of the union should or should not sell their goods, transact business, employ or be employed, should not be enforceable under the law but such agreements should not be deemed unlawful. Any seven or more members of a trade union could register their union under the act, the registration to be void if any of the purposes of the union were unlawful. Registered unions were empowered to hold real estate, ownership to be vested in trustees for the union. Funds were protected by requiring union officials to render account of all moneys received and expended and by author-

[1] James McArthur Conner, "Trade Unions in Toronto," chap. viii in *The Municipality of Toronto, A History* (Dominion Publishing Co., Toronto, 1923).

izing the trustees of the union to take legal action, if necessary, to recover funds. Registered unions were required to make an annual return to the Registrar-General of Canada and penalties were provided for neglect to make returns and for false returns. Any person circulating false copies of the rules of a union was to be deemed guilty of a misdemeanor.

The definition of "trade union" was that given in the English law, as

> such combination, whether temporary or permanent, for regulating the relations between workmen and masters, *or between workmen and workmen, or between masters and masters,*[1] or for imposing restrictive conditions on the conduct of any trade or business, as would, if this act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: Provided that this act shall not affect: (1) Any agreement between partners as to their own business; (2) Any agreement between an employer and those employed by him as to such employment; (3) Any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade or handicraft.

The terms of this definition limited the application of the law to unions whose purposes were in restraint of trade and a union had to prove this point before it could take advantage of the act. The definition was amended by the British Parliament in 1876 to include trade unions whether in restraint of trade or not. This change has not been adopted in the Canadian law. Under this law therefore membership in a registered trade union ceased to be a criminal conspiracy and registered unions were placed outside the scope of the restraint of trade doctrine.

[1] Part in italics not included in the definition of the Canadian act.

But the British Trade Union Act was accompanied by another law (1871, c. 32). On the recommendation of a Royal Commission this measure repealed the act of 1825, which punished violence and intimidation in trade disputes with imprisonment, and the Molestation of Workmen Act of 1859. This latter measure amended and explained the act of 1825 (c. 129), repealing the combination laws. It declared that workmen should not be guilty of "molestation" or "obstruction," and therefore should not be liable to indictment for conspiracy, for entering into agreements to fix wages or for endeavoring peacefully to persuade others to cease or abstain from work. It was provided that nothing in the act should authorize workmen to break or depart from any contract or authorize any attempt to induce any workman to do so. It also repealed the provisions of the act of 1861 (c. 100), which established a minimum penalty of two years' imprisonment for assault in pursuance of any unlawful combination or conspiracy. The new law substituted provisions which punished with imprisonment certain specified acts of coercion.

In 1872 (c. 31) the Dominion Parliament passed "An act to amend the criminal law relating to violence, threats and molestation," the bill having passed through all the stages in one day. This law was taken bodily from the English statute (1871, c. 32) annexed to the Trade Union Act. It provided a penalty of three months' imprisonment, with or without hard labor, for violence to person or property, intimidation or molestation with a view to coercing any person—

(a) being a master, to dismiss or cease to employ any workman, or being a workman, to quit any employment, or to return work before it is finished; (b) being a master, not to offer, or being a workman, not to accept any employment or work; (c) being a master or workman to belong to, or not to belong to, any

temporary or permanent association or combination; (d) being a master or workman, to pay any fine or penalty imposed by any temporary or permanent association or combination; (e) being a master, to alter the mode of carrying on his business, or the number or description of any persons employed by him shall be guilty of an offence against this act and shall be liable to imprisonment, with or without hard labor, for a term not exceeding three months.

4. A person shall, for the purposes of this act, be deemed to molest or obstruct another person in any of the following cases: that is to say,

(a) if he persistently follows such other person about from place to place; (b) if he hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in the use thereof; (c) if he watches or besets the house or other place where such person resides or works or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follows such person in a disorderly manner in or through any street or road.

5. Nothing in this section shall prevent any person from being liable under any other act, or otherwise, to any other or greater punishment than is provided for any offence by this section, but so that no person shall be punished twice for the same offence; provided that no person shall be liable to any punishment for doing or conspiring to do any act, on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing as hereinbefore mentioned.

Section 2 stated, *inter alia,* how prosecutions should be brought. Section 3 provided for certain appeal from any summary conviction or order under the act and Section 4 stipulated that

no person who is a master, or the father, son or brother of a

master in the particular manufacture, trade or business, in or in connection with which any offence under this act is charged to have been committed, shall act as a magistrate or justice of the peace, in any case of complaint or information under this act, or as a member of any court for hearing any appeal in any such case.

But while the British act repealed the penalties for assault in the law of 1861 this Canadian reproduction did not annul the corresponding and more stringent regulations in the law of 1869. In brief, the law provided that workmen agreeing to fix wages or using peaceful persuasion were not to be indictable for conspiracy but it was declared that coercive methods used with employers or workers would be illegal and would bring the combination within the conspiracy doctrine.

Like the original British act this law of 1872 drew much protest from labor organizations.[1] A decision under the British measure led to the appointment of another Royal Commission in Great Britain in 1874, the repeal of the law and the enactment of the Conspiracy and Protection of Property Act in 1875. In Canada a Select Committee of the House of Commons was appointed in 1874 to consider changes in the law. The committee reported:

It is . . . felt both in England and Canada that the judicial construction which has been placed upon the provisions of the Act differs from the impression which had been generally formed of them, and such construction has not operated as fairly to the working classes as the respective legislatures of the two countries intended in enacting them. And this Committee is of opinion that further and more remedial legislation is required.[2]

[1] *Cf. supra*, p. 69.

[2] *Hansard*, 1875, p. 899.

The committee stated that they found no serious case of hardship in Canada under the act but that the workers considered it "a standing menace and insult." Members like Irving of Hamilton contended that this Criminal Law Amendment Act nullified the Trade Unions Act and that it was too vague and general, especially when left to the decision of magistrates who often were in close relations with employers. The workers of Hamilton seem to have been to the fore in urging amending legislation and in 1875 Mr. Irving introduced a bill to repeal the law but it was withdrawn before a government bill—"An act to amend the criminal law relating to violence, threats and molestation." The Senate inserted words objectionable to the mover of this bill but as this was done during the last few days of the session, the Commons accepted the amendment and the bill was passed (1875, c. 39).

The Conservative Government of the day was defeated in the following election and in 1876 (c. 37) Hon. Edward Blake, Minister of Justice, introduced another bill on the subject. Mr. Blake explained that his measure combined points of the law of 1875 with new matter shown to be necessary by the discussion in England. It reproduced part of the Conspiracy and Protection of Property Act of Great Britain (1875, c. 86). The new act repealed the law of 1875 (c. 39) and substituted for Section 1 of the law of 1872 (c. 31), given above, the following:

1. Every person who wrongfully and without legal authority, with a view to compel any other person to abstain from doing anything which he has a legal right to do, or to do anything from which he has a legal right to abstain,

(1) Uses violence to such other person, or his wife or children, or injures his property; or

(2) Intimidates such other person, or his wife or children, by threats of using violence to him, her of any of them, or of injuring his property; or

(3) Persistently follows such other person about from place to place; or

(4) Hides any tools, clothes or other property owned or used by such other person, or deprives him, or hinders him in the use thereof; or

(5) Follows any such other person with one or more other persons in a disorderly manner in or through any street or road; or

(6) Besets or watches the house or other place where such other person resides or works or carries on business or happens to be

Shall be liable to a fine not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months.

Attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

4. A prosecution shall not be maintainable against a person for conspiracy to do any act or to cause any act to be done for the purposes of a trade combination, unless such act is an offence indictable by Statute or is punishable under the provisions of the Act hereby amended; nor shall any person, who is convicted upon any such prosecution, be liable to any greater punishment than is provided by such Statute or by the said Act as hereby amended, for the act of which he may have been convicted as aforesaid.

For the purpose of this section "trade combination" means any combination between masters or workmen or other persons, for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman, in or in respect of his business, or contract of employment or service; and the word "act" includes a default, breach or omission.

This new section attempted to define the coercion prohibited in disputes and contained two important steps in ad-

vance—the provision that any act lawful for an individual would be lawful when done in combination and the legalizing of peaceful picketing.

Speaking in the House of Commons in 1890, Edward Blake said:

> The law of conspiracy was thus swept out of all operation in connection with acts done for the purpose of a trade combination, except in two classes of cases, unless the act done was an offence *indictable* by statute, or unless it was an offence punishable under this particular Act, in which case, though not necessarily an indictable offence, it was an offence of that particular character and defined in that particular way by the very Act itself. Therefore, the law of conspiracy was abrogated, as to trade combinations, except in this particular class of offences defined, and in all cases of such graver offences as are *indictable* by statute. Any conspiracy, then, for the purposes of a trade combination, to do an act punishable at common law, or punishable by statute under summary procedure, was no longer criminal, and remained no longer capable of being prosecuted under the law of conspiracy. If it were one of these minor offences, not raised to the gravity of an offence indictable by statute, if it were a minor offence punishable summarily, it was swept out of the law of conspiracy altogether, if done in concert for the purposes of a trade combination.[1]

In 1876 organized labor in Canada had the protective clause of the Trade Unions Act, although limited to registered unions. The unions enjoyed the right of peaceful picketing granted by the law of 1876 and the important limitation on the law of conspiracy first secured in 1875 and reenacted in Section 4 of the law given above. A law of 1877 (c. 35), enacted after a strike of locomotive engineers on the Grand Trunk Railway, reproduced certain sections of the British Conspiracy and Protection of Property Act

[1] *Hansard*, 1890, pp. 3374-75. Italics mine.

of 1875 (c. 86) with reference to breach of contract. It provided that in general a breach of contract of service should be a civil wrong and not a crime as up to that time, but the law held that "certain wilful and malicious breaches of contract, involving danger to persons or property, or grave public inconvenience, should be punished as crimes" and to this end sections were inserted respecting breaches of contract by railway employees. These provisions, which are of especial interest to trade unionists employed on public utilities, are given as they now appear in the Criminal Code:

499. Everyone is guilty of an offence punishable on indictment or on summary conviction before two justices and liable on conviction to a penalty not exceeding one hundred dollars or to three months' imprisonment with or without hard labor who:

(a) Wilfully breaks any contract made by him knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury; or,

(b) Being bound, agreeing or assuming, under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof, with electric light or power, gas or water, wilfully breaks such contract knowing, or having reasonable cause to believe, that the probable consequences of his so doing either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of power, light, gas or water; or,

(c) Being bound, agreeing or assuming, under any contract made by him with a railway company, or with His Majesty, or anyone on behalf of His Majesty, in connection with a government railway on which His Majesty's mails, or passengers or freight are carried, to carry His Majesty's mails, or to carry

passengers or freight, wilfully breaks such contract knowing, or having reason to believe, that the probable consequence of his so doing, either alone or in combination with others, will be to delay or prevent the running of any locomotive engine, or tender, or freight or passenger train or car, on the railway.

In 1886, in the revision of the statutes, the changing of one word in the text of the law of 1876 marked a setback. Prosecution for conspiracy for the purposes of a trade combination which by that law could only be maintained against the grave offences *indictable* by statute could now be maintained against the minor offences *punishable* by statute as well. The significance of this change is best expressed in the words of the Hon. Edward Blake:

> You no longer have the protection as to the gravity of the excepted offence, which existed up to that moment. All offences punishable by statute, even though of the most trivial character, and punishable in the lightest way and by the most summary procedure, are once more, by the Revised Statute, drawn within the wide net of conspiracy, even though they are things done for the purposes of a trade combination. . . . I hope that all the protection which was given, and advisedly given, against this obnoxious law of conspiracy by the Act of 1876 will be restored by Parliament. . . . This law of conspiracy is a very wide law. I declare that the alteration which has taken place renders it impossible to say how small a matter may not now be punishable as a criminal conspiracy and introduces lamentable uncertainty into the operations of trade combinations.[1]

In 1889 three union bricklayers of Hamilton were sentenced to three months' imprisonment for conspiracy. These men were the mover, the seconder and a supporter of a resolution in the bricklayers' and masons' union that their body should boycott the city hall building and that any member

[1] *Hansard*, 1890, p. 3375.

working on it while Buscombe, a non-union worker, was employed should be fined fifty dollars. On appeal the Court of Queen's Bench found, according to the *Canadian Manufacturer,* "that they could be convicted lawfully despite R. S. C., Chapter 173, Section 13." [1] It was held that they might combine to regulate or alter the relations between masters and workmen as provided in that section [R. S. C. 1906, c. 146, s. 2(38)] but that what they had done was not for the purposes of their trade combination within the meaning of the statute; that they were actuated by malice, had conspired to injure and were guilty of an indictable misdemeanor. The *Canadian Manufacturer* commented: "Good British commonsense; good British law and a good British judge decide that the liberty and rights of the good law-abiding citizen must and shall be respected. And for this God be praised." [2]

In 1890 (c. 37) the term "conspiracy" as used in this section (1876, c. 37, s. 4) was qualified at the request of the Trades and Labor Congress.[3] The addition of the words "in refusing to work with or for any employer or workman" provided that prosecution should not be maintainable in any such case. The law of 1876 with this amendment was incorporated in the Criminal Code of 1892.

In 1887 (c. 49) the law with respect to intimidation, as enacted in 1869 (c. 20), was amended on the initiative of the Quebec Board of Trade. This measure, "An act to amend the Revised Statutes (c. 173) respecting threats, intimidation and other offences," was directed at the ship-laborer's union of Quebec.[4] The member promoting the bill said, "They do not kill people, but they gather by hundreds on the

[1] *Canadian Manufacturer*, March 1, 1889, p. 145.

[2] *Ibid.*, p. 146.

[3] *Trades and Labor Congress*, 1889, p. 20.

[4] *Cf. supra*, p. 82.

wharf and those who dare to go to work against their will know what is likely to befall them that evening, or the next day, when they happen to be alone or when darkness overtakes them." [1] And objection was taken to peaceful picketing: "Although the ship labourers may not strike a blow, they are there exercising no less an intimidation by silence." [2]

The section, as amended at this time, reads:

Every person who unlawfully and by force or threats of violence, hinders or prevents or attempts to hinder or prevent any seaman, stevedore, ship carpenter, ship labourer or other person employed to work at or on board any ship or vessel or to do any work connected with the loading or unloading thereof, from working at or exercising any lawful trade, business, calling or occupation in or for which he is so employed; or beats or uses any violence to, or makes any threat of violence against any such person, with intent to hinder or prevent him from working at or exercising the same or on account of his having worked at or exercised the same, shall, on summary conviction before two justices of the peace, be liable to imprisonment with hard labour, for any term not exceeding three months.

The amendment penalized "threats of violence" as well as force and made the law apply to ship laborers and all persons employed to do any work at or on board a ship. By omitting "usually" the scope of the law was extended to cover workers when casually employed.

The combines law of 1889, "An act for the prevention and suppression of combinations formed in restraint of trade," practically nullified the limited protection against the law of conspiracy afforded by the Trade Unions Act [3] but this ground was recovered when the offending section was omitted from the consolidation of the Criminal Code in 1892. At the same time the protecting clause of the Trade

[1] *Hansard*, 1887, p. 1230.

[2] *Ibid.*, p. 1231.

[3] *Cf. supra*, p. 122.

Unions Act was inserted in the Criminal Code and it was thereby made applicable to all unions, rather than to registered unions only, as before.

But while the unions were making this gain they were losing in another important sector. The peaceful picketing clause of the law of 1876 (c. 37) was omitted from the Code. Further, sections with regard to seditious offences were inserted. These provisions, to which a new interest was attached after the legal proceedings of the Winnipeg strike, are as follows:

132. Seditious words are words expressive of a seditious intention. (2) A seditious libel is a libel expressive of a seditious intention. (3) A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

133. No one shall be deemed to have a seditious intention only because he intends in good faith (a) To show that His Majesty has been misled or mistaken in his measures or (b) To point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any province thereof, or in either House of Parliament of the United Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state, or (c) To point out, in order to their removal, matters which are producing or have a tendency to produce, feelings of hatred and ill-will between different classes of His Majesty's subjects.

134. Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than two years who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy.

The following sections on common nuisance were also written into the Code. They made it illegal for workers under contract to go on strike with their contracts unterminated.

221. A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects.

222. Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual.

The accompanying table indicates the original Dominion enactments bearing on trade unions, the corresponding sections in the Criminal Code of 1892 and the Revised Statutes of 1906, and the legislation since 1906.

DOMINION LEGISLATION RELATING TO TRADE UNIONS

| *Original Provisions* | *Corresponding Sections in Criminal Code, 1892, c. 29* | *Corresponding Sections in Revised Statutes, 1906, c. 146* |
|---|---|---|
| 1869, c. 20, s. 41-42. On intimidation of ship workers and violence in trade disputes, as amended in 1887, c. 49 (*cf.*, pp. 120, 132). | 524-25 | 503 |
| 1872, c. 30. Declared registered unions not liable to conspiracy charge merely because their purposes were in restraint of trade (*cf.*, p. 123). | 517. Extended this clause to all trade unions whether registered or not (*cf.*, p. 134). | 497 |
| 1872, c. 31. Declared that certain coercive methods in trade disputes would bring the combination within the conspiracy doctrine (*cf.*, p. 125). | | |
| 1875, c. 39. Amended 1872, c. 31 but repealed by 1876, c. 37. | | |
| 1876, c. 37, s. 1. Repealed much of 1872, c. 31. Defined the coercive acts forbidden in trade disputes and legalized peaceful picketing (*cf.*, pp. 127-29). | 523. Peaceful picketing section omitted. | 501. Accused given right of trial by jury in picketing cases by 1905, c. 9, s. 3 (*cf.*, p. 141). |
| s. 3 (2). Defined "trade combination" (*cf.*, p. 128). | 519 | 2 (38) |

| | | |
|---|---|---|
| s. 4. Limited conspiracy in trade disputes to offences indictable by statute or punishable under this act itself (*cf.*, p. 128). | 518. "Indictable" changed to "punishable" in R. S. 1886, c. 173, s. 13 (*cf.*, p. 131). Amended 1890, c. 37, s. 19. | 590 |
| 1877, c. 35, s. 32. Wilful breaking of contracts of service in certain occupations penalized (*cf.*, pp. 130-31). | 521 | 499 |
| 1889, c. 41. Anti-combines law which made unions, whether registered or not, liable for conspiracy in restraint of trade by annulling (s. 6) the protective clause of 1872, c. 30 (*cf.*, p. 113). | 498. The anti-union clause omitted. | 498. Unions exempted from combines section by ss. 2, inserted by 1900, c. 46, s. 3. |
| | 132-34. Inserted in the Code, providing 2 years' imprisonment (20 years by 1919, c. 46) for seditious words, seditious libel and seditious conspiracy. | 132-34. S. 133, which enumerated certain non-seditious acts repealed by 1919, c. 46. |
| | 221-22. Defined and penalized "common nuisance." | 221-22. |

The Industrial Disputes Investigation Act of 1907, c. 20, prohibited a strike or lockout during the reference of a dispute in certain industries to a board of conciliation (*cf.*, p. ——).

An amendment to the Criminal Code in 1919, c. 46, inserted new sections on unlawful associations and seditious publications.

In 1900 (c. 46) the unions secured specific exemption from the anti-combines clauses of the Criminal Code and this established a precedent for all subsequent combines legislation.[1]

The threat from the combines legislation was disposed of but the unions had to face a new menace—the doctrine of civil conspiracy and the damage suit. Peaceful picketing was being disallowed. In 1900 we find the Trades and Labor Congress referring to cases in Brantford, Hamilton and other cities and the executive committee was instructed to ask the Attorney-General of the Dominion for a clear definition of the law.[2] In 1901 the decision in the famous

[1] *Cf. supra*, p. 114.

[2] *Trades and Labor Congress*, 1900, p. 32.

Taff Vale Railway case in Great Britain [1] caused Canadian labor much concern. According to this judgment a trade union, though not a corporation, nor an individual, nor a partnership, was liable to be sued for wrongful acts committed by its agents. At the 1902 session of the Trades and Labor Congress Ralph Smith, M. P., stated in his presidential address that the decision placed the funds of the unions in a very dangerous position. He asserted that " the Trade Unions Act never intended unions to be sued as unions " and assured the Congress that legislation would be introduced in Parliament to protect the unions in the circumstances.

It was reported at the same Congress that the desired relief had already been enacted in British Columbia (1902, c. 66) on the introduction of a bill by Mr. Joseph Martin. Damage suits in a general strike in the coal mines at Rossland [2] probably stimulated the passing of this act. The law which relieved the unions in British Columbia still remains on the statute books of that province.[3] It provided that a union should not be liable in damages for any wrongful act in connection with labor disputes unless it had formally concurred in the act. Unions or their officers could not be enjoined nor their funds made liable in damages for peaceful picketing or for publishing information with regard to a trade dispute or warning persons not to seek employment in the locality or not to purchase goods produced by the employer, party to the dispute.

The Congress instructed the provincial executives to take the necessary steps to have this legislation enacted in the various provinces. The Ontario executive submitted to the provincial government a bill which provided " that no trade

[1] Taff Vale Railway *v.* Amalgamated Society of Railway Servants, 70 L. J. K. B. 905.

[2] *Cf. infra,* pp. 139-40.

[3] *Cf. infra,* p. 194, footnote.

union shall be liable for damages for any act of omission or commission during any labor trouble unless the union is a concurring party." [1] The Quebec executive also requested the legislature of that province to pass an act "to protect labor unions against the jurisprudence established by the Privy Council in the Taff Vale case." [2] But British Columbia was the only province to respond and its action was of no avail. There has been no recourse to the measure and if it were tested in the courts no doubt would be declared an invasion of the criminal law powers of the Dominion and *ultra vires* of the provincial legislature.[3]

The Congress did not exaggerate the need of such legislation, for the Senate was proposing further repression and under the influence of the Taff Vale decision a number of cases were brought to recover damages from Canadian trade unions. In 1903 a bill, introduced by Senator Beique and passed by the Senate, was regarded by the executive committee of the Congress as "subversive of the first principles of common British constitutional government." It proposed to make picketing illegal by adding the following subsection to the Criminal Code:

> If at any time when a strike is in progress, three persons or more assemble for any purpose which may reasonably be deemed connected with, or in sympathy with such strike, and if while they are so assembled, any act of violence or intimidation is committed by one or more of such persons, or any threat is used by one or more of them, the whole in any way affecting the freedom of action of workmen, or affecting the employer against whom the strike is directed, members of his family, his employees, his property, or persons making use of said property, and said assemblage of persons shall be deemed an unlawful assembly; and each person forming part thereof when such

[1] *Trades and Labor Congress*, 1903, p. 25.

[2] *Ibid.*, p. 23.

[3] *Cf. infra*, p. 194, footnote.

act is done or threat used shall be deemed to have been a member of an unlawful assembly, and shall be punishable accordingly (unless punishable as a rioter as hereinafter mentioned), even although such person has not participated in such act or threat, unless the accused shows to the satisfaction of the court or judge, that he did not commit or countenance any such act or threat.[1]

The bill also proposed to amplify the Criminal Code on intimidation by making insulting language an offence. It added the part in italics to the original subsection as follows:

intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his, *her or their* property, *or by the use of insulting or opprobrious language addressed to him, her or any of them.*[2]

In the same year another bill, passed by the Senate but defeated in the House of Commons, sought to make it a criminal offence for any one not a British subject to incite or induce workers to leave their employment or go on strike. This would have prevented the American leaders of international unions taking any active part in trade disputes in Canada.[3]

The first of the damage suits arose out of a general strike in the coal mines at Rossland, British Columbia, in 1901. The mine owners contended that the strikers had acted illegally by intimidating men who were working in the mines, by inducing others to break contracts which they had made, by persuading men willing to work in the mines not to do so, and by watching and besetting the mines. The Le Roi Mining Company was granted an injunction in the terms of

[1] *Ibid.*, p. 17.

[2] *Ibid.*, p. 17.

[3] H. Coats, "The Labor Movement in Canada," *Canada and its Provinces*, vol. ix, p. 334.

the order in the Taff Vale case, forbidding the union to picket for the purpose of persuading or otherwise preventing persons from working for the plaintiffs and from procuring any persons who had or might enter into contracts with the plaintiffs to commit a breach of such contracts.[1] A number of the operators brought actions for damages on these grounds against the Rossland Miners' Union, No. 38, Western Federation of Miners. These procedings were subsequently dropped except in the case of Centre Star Mining Company, Limited, action tried July 16, 1904 at Victoria, and the War Eagle, which was held over pending a decision in the Centre Star case. The judge charged against the union and the jury brought in a verdict for damages of $12,500 and costs.[2] As a result of the judgment a permanent receivership was appointed for the Rossland Miners' Union. The receiver was entitled to collect $12,500, together with the costs of collection. The order put the receiver in possession of the Union Hall in Rossland as well as in possession of all funds which might have been collected by the union for initiation fees, fines, assessments, or otherwise, and which were in the hands of its secretary-treasurer.[3]

Meanwhile, in 1903, in Krug Furniture Co. *v.* Berlin Union [4] damages against the union were granted to several plaintiffs and the property of the union was made liable for the amount of the judgment and costs. An interim injunction, restraining the union from picketing and persuading, was made permanent.

In 1904 in Brauch *v.* Roth [5] it was held that

it is an actionable wrong to persuade a servant to break his

[1] 8 B. C. R. 370.

[2] 9 B. C. R. 531.

[3] *Labour Gazette*, vol. v, p. 433.

[4] 5 O. L. R. 463.

[5] 10 O. L. R. 284.

contract with his master, and it is no excuse that the persuader is not actuated by ill-will to the master but acts in good faith in pursuance of the provisions of the constitution of a trade union of which he and the servant are members.

Harrassed by these reverses the Trades and Labor Congress asked the government for amendments to the Criminal Code with respect to picketing and kindred offences. It was stated at the Congress of 1904 that although the Minister of Justice had promised legislation, none had been introduced.[1] In 1905 the Congress protested against the confusion of the law [2] and Parliament was asked to grant pickets the right of trial by jury.[3] The picketing section (523) of the Code read: "Every one is guilty of an indictable offence and liable on indictment or on summary conviction . . ." but occasionally a magistrate would assume to himself the right of exercising the option as between jury trial and summary trial. An amendment of 1905 (c. 9, s. 3) inserted the words "at the option of the accused," but trial by jury did not prove a sufficient answer, for jury verdicts were sometimes adverse.[4]

In 1907 further hostility developed in the Senate. A bill which failed to become law proposed to make it a criminal offence for an international union officer to interfere in any way in an industrial dispute in Canada. Another bill to exclude officers of international trade unions from Canada, introduced by Senator McMullen, was defeated in 1909.[5] A proposal of Senator Belcourt had the same objective but

[1] *Trades and Labor Congress*, 1904, p. 34.

[2] *Ibid.*, 1905, p. 16.

[3] *Ibid.*, 1905, p. 48.

[4] *Labour Gazette*, vol. xxvi, p. 418.

[5] *Trades and Labor Congress*, 1909, pp. 11, 58.

in effect would have made most unions illegal associations. This measure proposed to confine the immunity granted by Section 497 of the Criminal Code to trade unions composed entirely of British subjects. Senator Belcourt desired that the section should read: "The purposes of a trade union, *whose members are British subjects,* are not by reason merely that they are in restraint of trade unlawful within the meaning of Section 496."[1] The bill was defeated despite the support of the Canadian Federation of Labor, which opposed the international trade unionism of the Trades and Labor Congress.

Soon after this success in the Senate Canadian labor won an appeal to the Privy Council. In Metallic Roofing Company of Canada, Ltd. *v.* Local Union No. 30, Amalgamated Sheet Metal Workers' International Association,[2] which began in 1902, action was brought by the firm to recover damages for conspiracy to injure them by calling out their workers on strike and in other ways. It was argued for the union that any injury sustained by the firm was strictly limited by the object of the union to advance its own legitimate interests and was not occasioned by malice. But the trial judge, Mr. Justice McMahon, directed the jury that if the resolution of the union calling out the men were the cause of the strike there was an actionable wrong without regard to the motive, and without regard to the conspiracy alleged. Judgment for $7,500 damages was given in favor of the plaintiffs and was affirmed by the Divisional Court of Ontario and by the Court of Appeal for Ontario.[3]

Meanwhile the British trade unions had fared better for the Trade Disputes Act of 1906 legalized peaceful picketing

[1] *Trades and Labor Congress,* 1910, pp. 10, 54.

[2] 9 O. L. R. 171. The case was continued as Metallic Roofing Co. of Canada, Ltd. *v.* Jose, *et al.*

[3] [1907] 14 O. L. R. 156.

and sympathetic strikes and exempted unions from civil conspiracy as the law of 1875 had freed them from criminal conspiracy. Organized labor in Canada was encouraged to look to Great Britain and the Metallic Roofing Company case was appealed to the Privy Council. In July, 1908, that final authority allowed the appeal, discharged the judgment and ordered a new trial on the grounds that a resolution to strike, followed by a strike, is not unlawful.[1] The dispute was finally settled out of court.

This furnished a precedent for the decision in Graham *v.* Knott *et al.*[2] The union notified the employer that his union employees would be called out unless he discharged a worker who had refused to submit to a trade test by the union and accordingly was not admitted to membership. On his discharge the worker brought an action, claiming an injunction and damages, but decision was given against him on appeal.

Judgment was not pronounced on picketing in these cases, but in Cotter *v.* Osborne *et al*,[3] peaceful picketing was held unlawful. Action was brought in 1906 by the master plumbers of Winnipeg against the journeymen plumbers and members of the local unions for an injunction to restrain them from interfering with the plaintiffs and the men they had hired during a plumbers' strike, and to recover damages for injuries sustained. Damages were assessed against the defendants for $2,000 and costs and the injunction, restraining the defendants from interfering with the plaintiffs or their workmen, was made perpetual. An appeal was taken and the Manitoba Court of Appeal, on March 15, 1909, gave judgment that the appeal of the defendants should be dismissed but that no costs of the appeal should be allowed to either party. It was held:

[1] C. R. [1909] A. C. 1.

[2] [1908] 14 B. C. R. 97.

[3] [1909] 18 Man. R. 471.

that for a number of persons to combine together to procure others to break contracts is unlawful and if such others are induced to break, and do break, their contracts this constitutes an actionable wrong. . . . It is no justification for the defendants to show that they were not actuated by malice or ill will against the persons injured by their acts and that they only sought to further their own interests. The picketing or besetting of the plaintiffs' shops, with the object of coercing employees or inducing them to cease working, is also unlawful.

The plaintiffs were unable to collect the amount of their judgment and on August 19, 1909, their counsel applied for the appointment of a receiver to receive and held all dues payable to the union for the purpose of satisfying the plaintiff's judgment. The application was granted. The effect of the order was to require the members of the union to hand over their monthly dues and tolls to a representative of the court, who in turn handed them over to the plaintiffs. A petition for special leave to appeal direct from the Manitoba Court of Appeal to the Privy Council was lodged but their Lordships refused leave to appeal.[1]

Picketing as conducted was held an actionable wrong in Vulcan Iron Works *v.* Winnipeg Lodge, No. 122, International Association of Machinists, and others. The case arose out of a strike or lockout of the machinists, boilermakers and blacksmiths employed by the Vulcan Iron Works in May, 1906. The firm claimed $25,000 as damages for losses sustained and asked for a perpetual injunction against the defendants and the six labor unions involved from interfering with their employees. Mr. Justice Mathers, who delivered the judgment on March 19, 1909, was of the opinion that the picketing as conducted amounted to a common-law nuisance and that the 92 individual defendants, as well as all who acted in combination with them, were liable

[1] C. R. [1911] 1 A. C. 137.

to the plaintiff for the damages sustained. It was held that the omission of the peaceful picketing clause from Section 523 of the Criminal Code—

would indicate the intention of Parliament to be that attending for the purpose of obtaining and communicating information would not deprive watching and besetting of its wrongful character, if such watching and besetting, considered apart from such purpose, was wrongful. In other words, that watching and besetting may under our Act be merely for the purpose of obtaining and communicating information, and may still be wrongful within the Act.

The injunction was made perpetual and judgment entered for $500 against three of the unions involved and the individual defendants, except six men who did not picket, with costs of suit. The appeal of the machinists' unions to the Manitoba Court of Appeal was dismissed. The full bench of judges was unanimous in upholding the findings of the trial judge.[1]

While in a majority of cases picketing was declared illegal, some decisions were in favor of the unions. In 1906 three striking employees of the Lowndes Clothing Company were tried at the sessions at Toronto on charges of picketing and intimidation. It was alleged that they had stopped employees of the firm and endeavored to compel or persuade them not to go to work. The jury acquitted the accused after a short deliberation. In his charge to the jury the judge said:

Pickets have the right to ask men to abstain from work, and find out what is going on in the building, or to give information. There is nothing in the law to prevent that. If they go beyond that, and threaten men with a view of compelling them from working, it is against the law.[2]

[1] [1911] 21 Man. R. 473.

[2] Rex *v.* Fraser *et al*, *Labour Gazette*, vol. vii, p. 927.

In a strike of moulders at the Buck Stove Works at Brantford in 1908, one hundred men were summoned for besetting the plant but in the trial of two sample cases County Judge Hardy held that as there was no evidence of restraint or compulsion the picketing was not illegal.[1]

But the preponderance of decisions was against the unions and the *Labour Gazette,* commenting on the situation after the decision in the Vulcan Iron Works case stated:

There would seem to be a necessity of getting the question involved before the Privy Council for final decision. The recent case of the Plumbers, out of which Canadian organized labor hoped to get the decision of the Privy Council that peaceful picketing was not unlawful, failed to get before the Council on account of delay in making the necessary application. Therefore, as things now stand, labor in this country is under the disabilities of the Taff Vale decision, although it has long since been remedied in Great Britain.[2]

In 1910 when the solicitor of the Trades and Labor Congress applied to the Minister of Justice, Hon. A. B. Aylesworth, to have reinserted in the Criminal Code the proviso on peaceful picketing, omitted in 1892, Mr. Aylesworth wrote in reply:

I think it plain, upon the wording of the section as it stands at present, that, to constitute an offence prohibited by this section, the person accused must be shown to have committed a prohibited act with the intent mentioned in the section; i. e., with a view to compel some other person to abstain from doing something he has a right to do, or to do something he has a right to abstain from doing. The intent, with which the act complained of has been done, is the essential ingredient necessary to be established to constitute the offence, and, if such

[1] *Labour Gazette,* vol. ix, p. 95.

[2] *Ibid.,* vol. xi, p. 1171.

intent is absent, and the besetting or watching described by the Act is merely to obtain or communicate information, I cannot think the offence prohibited by the Act, as it now stands, would be made out. In this view, it would seem that the amendment you suggest would not be necessary or likely to improve the position of the men in whose interests you are acting, so far as concerns the right they claim to picket peacefully.[1]

The solicitor of the Congress recorded that Sir Charles Fitzpatrick was of the same view while he was Minister of Justice.

There was a marked decline in the number of labor disputes during the depression at the beginning of the war. But there was a decided increase in 1916 as employment improved and soon the anomalous legal situation with regard to picketing came to the fore. It became the practice in Manitoba to resort to the injunction in labor disputes, as in Ontario some years before.[2] In a strike of meat-cutters at Winnipeg in January, 1917, the three firms involved entered damage suits for $25,000 each and applied for perpetual injunctions restraining the union and its members from interfering with them.[3] The strikers were forced to terminate the dispute without gaining their objective, the reinstatement of certain dismissed employees.[4]

On May 1, 1917, machinists of Winnipeg employed by the Vulcan Iron Works, the Manitoba Bridge and Iron Works, the Stewart Sheaf-Loader Company and the Strong-Scott Manufacturing Company went on strike for a wage increase. The Stewart Sheaf-Loader Company granted the increase but at least two of the other firms claimed damages and secured an injunction preventing picketing. The unions ter-

[1] *Trades and Labor Congress*, 1920, p. 136.

[2] *Cf. supra*, p. 140.

[3] *Trades and Labor Congress*, 1917, p. 103.

[4] *Labour Gazette*, vol. xvii, p. 369.

minated the strike on the understanding that the court proceedings would be discontinued.[1]

In the same year the F. W. Woolworth Company of Winnipeg secured an injunction preventing about forty-five of their girl clerks, who were on strike to have their wages increased from six to eight dollars per week, from picketing the establishment. The firm also asked for $25,000 damages. They replaced the employees and the strike failed.[2]

The Winnipeg Trades and Labor Council asked the Dominion executive of the Trades and Labor Congress to press for an amendment to the Criminal Code to prevent interference with peaceful picketing by injunction. Solicitor O'Donoghue of the Congress submitted the opinion[3] that as picketing was affected by both the Criminal Code of the Dominion and the civil law of the provinces, action in both spheres would be necessary. He recommended an amendment to the Criminal Code legalizing peaceful picketing and the enactment of legislation in the various provinces to prevent recourse to the civil process of injunction in labor disputes. President Watters of the Congress and Calvin Lawrence, representing the Brotherhood of Locomotive Engineers, asked the government that the Criminal Code should be amended accordingly. The Minister of Justice seemed to favor either the elimination of the clause forbidding watching or besetting from the Code or the addition of a section authorizing peaceful picketing.[4] President Watters urged that Canadian labor should have the rights granted by the Trade Disputes Act of Great Britain in 1906 and he

[1] *Labour Gazette*, vol. xvii, p. 609; *Trades and Labor Congress*, 1917, pp. 103, 195.

[2] *Labour Gazette*, vol. xvii, p. 612; *Trades and Labor Congress*, 1917, p. 103.

[3] *Trades and Labor Congress*, 1917, p. 193.

[4] *Ibid.*, 1917, p. 103.

submitted to Sir Robert Borden, the Prime Minister, a draft "Act respecting trade unions and trade disputes" the provisions of which were taken from the British act:

1. This Act may be cited as "The Trade Disputes Act, 1917."

2. In this Act the expression "trade union" has the same meaning as in the Trade Unions Act, chapter one hundred and twenty-five of the Revised Statutes, 1906.

In this Act the expression "trade dispute" means any dispute between employers and employees or between workmen and workmen, which is connected with the employment or non-employment, or the terms of employment or with the conditions of labor, or any person; and

The expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises.

3. Section four of chapter one hundred and twenty-five of the Revised Statutes, 1906, is amended by adding thereto the following subsection: "3. Any act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless such act, if done without any such agreement or combination, would be actionable."

4. The Criminal Code, chapter one hundred and forty-six of the Revised Statutes, 1906, is amended by adding immediately after section five hundred and one thereof, the following sections:

"501A. It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

"501B. Any act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the

ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

"501C. Any action taken against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect to any tortious act, alleged to have been committed by or on behalf of the trade union, shall not be entertained by any Court." [1]

Sir Robert Borden replied that the proposal had been submitted to the Minister of Justice. But nothing came of it.

In 1918 labor delegations urged upon the Dominion Government and several of the provincial governments that the law should be revised and that issuance of injunctions should be prevented.[2] Quebec and Ontario tried to shift responsibility to the Dominion. The Quebec Minister of Labour thought anti-injunction legislation could not be passed in any province until first enacted by the Dominion [3] and Premier Hearst of Ontario, in declining to introduce legislation on the subject, thought "it would be doubtful if any great object would be achieved in the direction you have in mind so long as the Criminal Code remains in its present form." [4] The British Columbia law prohibiting injunctions apparently had not proved satisfactory for in 1918 a new draft act on the subject was submitted to the provincial government.[5]

At this time it appeared that the legal status of British

[1] *Trades and Labor Congress*, 1917, p. 105.

[2] *Ibid.*, 1918, p. 20.

[3] *Ibid.*, p. 48.

[4] *Ibid.*, p. 40.

[5] *Ibid.*, p. 63; *cf. infra*, p. 194, footnote.

trade unions, denied at Ottawa in 1917, might be granted in Manitoba. The Industrial Conditions Act of Manitoba (1919, c. 43), which authorized the appointment of a Council of Industry with a view to the promotion of better industrial relations, empowered the council to declare certain rules of law in force. These rules annulled the law of civil conspiracy, exempted unions from responsibility for the tortious acts of their agents and legalized sympathetic strikes and peaceful picketing, exactly as in the measure proposed in 1917. But an amending law of the next year (1920, c. 57) repealed these provisions and withdrew the power given the board to bring them into force. The amendment recognized the right of employers and employees to organize for any lawful purpose and their right to bargain with one another individually or collectively through their organizations or representatives, provided that in case of dispute as to the method or terms of bargaining the dispute should be submitted to the Industrial Council.

The War Labor Policy of the Dominion Government adopted in 1918[1] recognized the right of association for employers and employed.

When President Tom Moore took office in the Congress year 1918-19 he was confronted with a series of problems arising out of the general strike in Winnipeg and various Dominion Government regulations, which imposed restrictions on trade-union action. An order-in-council (P. C. 2381) of September 25, 1918, prohibited the use of fourteen different languages. As the executive of the Congress stated, this order-in-council restricted ordinary trade-union activities, especially in the mining regions, and after conferences with the Prime Minister and the Department of Justice the order-in-council was amended on October 15, again on November 13 and finally on April 2, 1919.

[1] *Cf. supra*, p. 102.

Other restrictions were imposed by an order-in-council (P. C. 2384) of September 28, 1918, which declared that while Canada was engaged in war fourteen specified organizations were to be considered unlawful, as was also any association that endeavored to bring about any governmental, political, social, industrial or economic change in Canada by the use of force, or by threats, or which defended the use of force. Any person connected with such an association as official or member, or who knowingly allowed his premises to be used as a meeting place for such association, or who printed any book or pamphlet in which force was advised or defended, was liable to fine and imprisonment. The order-in-council also made it a punishable offence during the war to hold or attend meetings conducted in the language of any enemy country or in the Russian, Ukranian or Finnish language, religious services excepted.[1] The Congress protested vigorously and after many conferences amendments were passed on November 15, 1918, on January 11, 1919, and the regulations entirely repealed on April 2, 1919.

The orders-in-council relating to illegal organizations gave rise to legislation despite the protests of organized labor. In 1919 (c. 46) an act was passed amending the Criminal Code as to unlawful associations. It provided that

> 97a. (1) Any association, organization, society or corporation, whose professed purposes or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury, in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise, or defend, shall be an unlawful association.

[1] *Labour Gazette*, vol. xviii, p. 782.

Property of such an association could be seized without warrant and any officer, representative, member, or person associated with it in any way was liable to imprisonment for not more than twenty years. The letting of premises to an unlawful association was made an offence, subject to a fine of not more than $5,000 or imprisonment for not more than five years or both fine and imprisonment.

Section 97b provided that any person who printed, published, sold, distributed or attempted to circulate through the mails, or import into Canada, any literature advocating, advising or defending the use, without authority of law, of force, violence, terrorism or physical injury to person or property or threats of such injury as a means of accomplishing any governmental, industrial or economic change should be liable to imprisonment for not more than twenty years. The penalty for speaking seditious words, which under Section 134 of the Code was limited to two years' imprisonment was changed to permit of a maximum of twenty years.

President Moore stated in his report to the Trades and Labor Congress of 1919: "Many of its provisions, such as arrest on suspicion without warrant, liability for attendance at meetings declared illegal without knowledge of such being the case, the undefined use of the words 'economic force' are liable to lead to dangerous abuses and unnecessary interference." [1]

In 1920 one of the leaders of the Winnipeg general strike was tried on a charge of seditious conspiracy under Sections 132 and 134 of the Criminal Code. The defendant claimed protection under Section 590 of the Code but it was held that the combination was not engaged in a legitimate strike. Acts were done and caused to be done which were offences punishable by statute and therefore the combination was not

[1] *Trades and Labor Congress*, 1919, p. 28.

protected by this section. According to the decision, when the definition of trade combination (Section 2 (38)) is read along with Section 590 of the Code, it is found that:

> No conspiracy shall be maintainable against any person for conspiracy . . . for doing any act or causing any act to be done for the purpose of any combination between (1) masters, or (2) workmen, or (3) other persons for regulating or altering the relations between any persons being masters, or workmen or for regulating or altering the conduct of any master or workman in or in respect to his business or employment or contract of service. In order that the combination may enjoy the immunity provided for in the enactment it must have as its purpose at least one of the purposes above set forth.

The decision held that while workers could strike to increase wages, for example, since the object would be to alter the conduct of a master in the employment of his workmen under Section 590, a sympathetic strike was not lawful under the section and the strikers could be prosecuted for conspiracy. And, further, that the omission of the picketing clause from the Criminal Code made peaceful picketing unlawful.[1] The defendant was convicted of seditious conspiracy and sentenced to the maximum term of twenty years' imprisonment under Section 134 of the Criminal Code, as amended in 1919.

In the same year Solicitor O'Donoghue of the Trades and Labor Congress submitted to that body an opinion on sedition, conspiracy and other subjects to which the Winnipeg strike had given new importance.[2] He cited the dicta of Judge Metcalfe on the subject of sedition in the Winnipeg strike cases:

[1] Rex *v.* Russell [1920] 51 D. L. R. 1.

[2] *Trades and Labor Congress*, 1920, p. 135.

Sedition is a comprehensive term embracing all those practices, whether by word, deed or writing, which are likely to disturb the tranquillity of the State, and lead ignorant persons to endeavor to subvert the government and the laws of the Empire. The objects generally are to excite discontent and insurrection, stir up opposition to the government, and to bring the administration of justice into contempt. This definition is somewhat vague, but in that respect it only resembles the offence itself. It is hard to lay down any decisive line, on the one side of which acts are seditious, and on the other innocent. . . . All political writings between treason and those which are lawful, may be deemed seditious, as for instance, if a man curses the King, wishes him ill, gives out scandalous stories concerning him, or does anything that may lessen him in the esteem of his subjects, or may weaken his government or may raise jealousies between him and his people. It is also seditious libel if done with an intention or likely to inflame the minds of the laborers and working people, and to incite them to acts of violence, riot and disorder.

According to the solicitor of the Congress, now that Section 132 of the Code alone remained to define sedition, Section 133, indicating what sedition was not, having been struck out in 1919, the accused had little chance. The defence provided by Section 133 was no longer available, according to the reasoning of Judge Metcalfe on the omission of the section on picketing.[1] He held that if the offence of sedition were abolished, society would be amply protected by Section 69 of the Criminal Code as follows:

Every one is a party to and guilty of an offence who: (a) actually commits it; or, (b) does or omits an act for the purpose of aiding any person to commit the offence; or, (c) abets any person in commission of the offence; or, (d) counsels or procures any person to commit the offence.

[1] *Cf. infra*, p. 156.

2. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be, a probable consequence of the prosecution of such common purpose.

With reference to the new section of the Code on "unlawful associations" the opinion held that the words "force" and "terrorism", coupled with the words "industrial or economic change" as there used, applied to the influence exerted by trade unions and Judge Metcalfe in Rex *v.* Russell was quoted to show that judges so interpreted it. In short, "the use of these words leaves the door wide open for the prosecution of every trade union in Canada."

On the subject of picketing the opinion took issue with the decision in the Russell case. Mr. Justice Metcalfe referred in his decision to the omission of the peaceful picketing proviso in the Criminal Code of 1892 and concluded: "Therefore a striker has no more justification for picketing than he obtains by the right of every British subject to go about his business in a peaceable way." The trade-union view is that the dropping of the proviso does not make peaceful picketing illegal. The proviso was merely precautionary. Certain specific acts were prohibited and other unspecified acts were not, and therefore these latter are legal whether the clause so stating is omitted or inserted. This position is precisely that taken by Mr. Aylesworth in 1910. In his view "the person accused must be shown to have committed a prohibited act with the intent mentioned in the section." But the Congress solicitor advised that in view of the attitude of the courts the Congress should try to have the section establishing the right of peaceful picketing reinserted in the Criminal Code.

The opinion stated with respect to the section (499) on

the breaking of contracts that "the remedy is to give notice of termination of the contract at the beginning of negotiations for better conditions. If a rupture eventually occur, there will be no 'contract' in existence and the section will not apply."

On the section (590) exempting from the charge of conspiracy any act done for the purposes of a trade combination unless the act were an offence punishable by statute, Mr. O'Donoghue indicated that most offences charged against trade unionists are punishable by statute, as was evident in the cases arising out of the Winnipeg strike. Workers covered by Section 499 above were not protected by Section 590, as a strike on their part would be contrary to Section 499 and "punishable by statute" unless they gave notice of termination of their contracts. To substitute the word "indictable" for "punishable," as desired by the Hon. Edward Blake [1] and as the section read originally, would not meet the needs of organized labor for almost every offence charged against labor during trade disputes, including picketing, is an "indictable offence."

The opinion indicated with regard to the Criminal Code sections on common nuisance (221-2) that workers under contract were bound by these sections as being under a "legal duty" to perform their work and that they could not strike lawfully without terminating their contracts.

Acting on this opinion the Congress submitted the following proposed amendments to the Criminal Code at its interview with the Dominion Government in 1921:

(a) Repeal of the section referring to sedition, seditious intention, seditious libel and seditious conspiracy. (b) The reinsertion in the Criminal Code of the sections establishing the right of peaceful picketing. (c) Reconsideration of amendments passed during the panicky session of Parliament, 1919,

[1] *Cf. supra*, pp. 129, 131.

especially the elimination of the words "force," "terrorism," and "industrial or economic change," as mentioned in 97b and other sections. (d) Amendments to define sympathetic strikes and bring Canadian law into harmony with the British law on this matter.[1]

Hon. Arthur Meighen enclosed with his reply of April 29 a memorandum from the Department of Justice, setting forth the position of the government on the amendments submitted.[2] It rejected all of the above proposals. The memorandum stated on the subject of the first request that:

> Although there is perhaps no place in the world where the labor organizations have been more successful in securing advanced legislation, which has actually created a class privilege "a sort of 'benefit of clergy' for trade unions," than in England, labor organizations there have not yet gone the length of asking to be specially exempted from the liabilities incident to the criminal law of sedition.

It concluded that: "It is difficult to perceive that the proposal of the Trades and Labor Congress should be entertained at all."[3] Commenting on this reply, the executive committee of the Congress stated: "The reply seems to strengthen our own arguments by stating that sedition is not a crime in itself but is simply a general descriptive term for the three species of seditious offences."

As to the re-insertion of the peaceful picketing clause the writer of the memorandum was quite evidently of the opinion that the British and Canadian Parliaments of a half century before had been wrong in making it lawful for pickets to watch and beset to obtain or communicate information. In his view:

[1] *Trades and Labor Congress*, 1921, p. 23.

[2] *Ibid.*, p. 28.

[3] *Ibid.*, p. 29.

All experience and evidence upon the subject goes to show that watching and besetting for the purpose of peaceably persuading is really a contradiction in terms. The truth is that picketing—however conducted—when it consists of watching or besetting the house, etc., is always and of necessity in the nature of an annoyance to the person picketed. As such, it must savour of compulsion, and it cannot be doubted that it is because it is found to compel that trade unions systematically resort to it. It is obvious how easy it must be to pass from the language of persuasion into that of abuse, and from words of abuse to threats and acts of violence. A considerable proportion of the cases of physical violence which occur during times of strike arise directly or indirectly out of picketing. Therefore, any amendments of the law which will legalize or sanction, under the guise or description of "peaceful picketing," a practice which has come to mean seeking to compel a man by terrorism to abstain from doing that which he has a legal right to do, could not be advised.[1]

"The reply," the executive committee of the Congress reported, "places the Government on record as opposing picketing in all forms."[2]

In declining to delete the words "force," "terrorism" and "industrial or economic change" it was stated that:

In these provisions, the expression "force," which is the more general, is to be understood in a sense cognate with the less general terms "violence," "terrorism" or "physical injury," and this construction, which is thought to be the only true one, makes it clear that the mischief aimed at is not a curtailment of the legitimate rights or practices of trade unions, but the prohibition of associations whose professed or actual purpose is to bring about "governmental, industrial or economic changes within Canada," by the argument *ad baculum*, that is to say, by lawlessness of every description within the category of

[1] *Ibid.*, p. 30.

[2] *Ibid.*, p. 33.

"force, violence, terrorism or physical injury to person or property or threats of such injury," which, unfortunately, have been so often the accompaniment of strikes.[1]

The executive committee of the Congress reported that this statement—

does not in our estimation correctly state the position when it says it is "not a curtailment of the legitimate rights or practices of trade unions" inasmuch as the declared policies of trade unions are to bring about beneficial "industrial and economic change" by all *legal* methods, and the Criminal Code as at present constituted makes it a crime to bring about such change by *any* method.[2]

As to the suggested amendment of the definition of "trade combination" to make Section 590[3] a protection against prosecution for sympathetic strikes, the writer again holds that Canada must not follow British precedent. He states:

It is a principle of the common law founded in the right of protection of individuals and of the public, that a combination of persons to do an unlawful act, or to do a lawful act by unlawful means, is criminal, and it is moreover actionable civilly if there be special damage. Compatibly with this rule of conduct a sympathetic strike cannot practically be worked. This is an inheritance which we have from the common law, and it could not be exchanged with advantage to the general public for the enactment which is suggested.[4]

With the government on record as holding these views, the unions could not expect any diminution in the number of injunctions and damage suits. At the Congress of 1922,

[1] *Trades and Labor Congress*, 1921, p. 30.

[2] *Ibid.*, p. 33.

[3] *Cf. supra*, p. 158; *infra*, pp. 166-67.

[4] *Trades and Labor Congress*, 1921, p. 31.

the executive committee reported "an increasing number of injunctions based upon the present provisions of the Criminal Code and designed to prohibit the right to carry on peaceful picketing during the progress of trade disputes", and the executive committee recommended that the convention reaffirm its demands of the past years in these matters.[1] One of the cases concerned the International Ladies Garment Workers Union,[2] which, in November, 1921, had declared a general strike in Montreal. One of the employers obtained an interim injunction restraining the union and its members from unlawfully picketing his factory. The case was heard in the Superior Court of Quebec, District of Montreal, and a decision was given maintaining the injunction. In delivering judgment, Mr. Justice Maclennan stated that the omission of the peaceful picketing clause from the Criminal Code indicated "the intention of Parliament . . . that attending for the purpose of obtaining and communicating information would not deprive watching and besetting of its wrongful character." He held that the picketing was not for the purpose of peaceful persuasion but for compulsion and was therefore wrongful, and without lawful authority, and amounted to a common-law nuisance as well as a breach of the criminal law. On appeal, the Court of King's Bench maintained the judgment and dismissed the appeal.

Meanwhile the Congress of 1923 had endorsed the union's request for funds in order to appeal the decision to the Privy Council if necessary.[3] In the same year the executive committee for Manitoba reported the failure of an anti-injunction bill and a bill on peaceful picketing in the Manitoba Legislature.[4]

[1] *Canadian Congress Journal*, September, 1922, p. 480.

[2] Rother *v.* International Ladies' Garment Workers Union, *et al*, [1921] 60 Rapports Judiciaires de Québec (Cour Supérieure) 105.

[3] *Trades and Labor Congress*, 1923, p. 100.

[4] *Ibid.*, p. 62.

In the case of Dame Hannah Bercowitch *et al. v.* the Joint Board of the Cloak and Suit Makers' Union of Montreal *et al.*[1] in 1923 an injunction was granted restraining the defendants "from molesting or interfering with plaintiffs and from in any way picketing in front of or at their places of business or from besetting or watching such places of business or the residence of any of the plaintiffs' employees. . . ." The union was condemned to pay $200 damages and all the defendants were condemned to pay the costs of the procedings.

The confusion in the law is well illustrated by two recent judgments. In a 1923 case against the Hotel and Restaurant Employees International Alliance in Calgary, Alberta, Mr. Justice Ives ruled:

> There is no doubt that the defendants agreed together to picket the City Café when at the special meeting the resolution was adopted. And at the time, it must have been in the minds of the defendants that the result of such picketing would reduce the café business. Indeed they could have no other object than that such reduction would compel a compliance with the union's terms of employment. But there is no evidence that any malice actuated the defendants or that injury to the plaintiff was their primary object or intent. They did legally what they were legally entitled to do. The public patronage of the plaintiff's business was entirely voluntary. His customers could lawfully cease their patronage at any moment and were induced to do so by the defendants in an effort to advance the legitimate interests of themselves and other members of the union.[2]

In an action against the Motion Picture Projectionists' Union at Hamilton, Ontario, in 1924, Mr. Justice Rose stated:

[1] *Labour Gazette*, vol. xxiii, p. 635.

[2] *Ibid.*, p. 1341.

There will be an order restraining the defendants and each of them, their servants and agents, etc., from publishing by means of handbills or banners or otherwise the statements complained of by the plaintiffs as defamatory and from watching or besetting the theatres for the purpose of persuading or otherwise preventing persons from entering the same, or for the purpose of persuading or otherwise preventing persons working for the plaintiffs, or in the theatres, or for any other purpose, and from procuring or endeavoring to procure any person or persons to break his or their contracts with the plaintiffs or with the theatre.[1]

A decision in the same case[2] in the Court of Appeal for Ontario, which expresses a view directly opposite to the general trend, may mark a new era in litigation respecting trade disputes. Two points are emphasized: (1) that there must be a trust fund to which recourse may be had; (2) that the Ontario courts at least will hesitate to grant interim injunctions in labor cases.

The order given above was granted by a judge of the Supreme Court of Ontario but the decision in the Court of Appeal took strong exception to it. It was indicated that the provincial courts in issuing injunctions to restrain trade unions from committing acts established as offences and forbidden by the Dominion Parliament were assuming to invade the Dominion's field of legislation and to regulate public conduct. Government by injunction was pronounced "a thing abhorrent to the law of England and of this Province." It was held on appeal that no case had been made which warranted the granting of an interim injunction and the injunction was dissolved; and, again, that where, as in this case, the action is to recover damages for a tort, and it is not alleged that the unincorporated body is possessed of a trust

[1] *Ibid.*, vol. xxiv, p. 908.

[2] Robinson *v.* Adams [1924] 56 O. L. R. 217.

fund to which the plaintiff, in the event of success, would have the right to resort, an order for representation should not be made:

MIDDLETON, J.—The equitable jurisdiction of a civil court cannot properly be invoked to suppress crime. [This had reference to the provisions of the Code as to picketing.] Unlawful acts which are an offence against the public, and so fall within the criminal law, may also be the foundation of an action based upon the civil wrong done to an individual, but when Parliament has, in the public interest, forbidden certain acts and made them an offence against the law of the land, then, unless a right to property is affected, the civil courts should not attempt to interfere and forbid by their injunction that which has already been forbidden by Parliament itself. Much less should the courts interfere when the thing complained of is not within the terms of the criminal law, although it may be rightly regarded as objectionable or even immoral, for then the civil courts by injunction are attempting to enlarge and amend the criminal law. Government by injunction is a thing abhorrent to the law of England and of this Province. The fact that the criminal law emanates from the Dominion, and the civil law from the Province, and that our courts are created by the Province, only serves to manifest the desirability of refraining from any assumption by the civil courts of a power to regulate public conduct. The questions of trade unionism and of the open shop and of how far those who advocate the one as against the other should be permitted to go in endeavoring to uphold and enforce their views, are essentially matter for Parliament and quite foreign to civil courts. . . . The cases which I have quoted indicate the necessity of great care being exercised upon applications for an interim injunction in cases such as this. . . . It must . . . not be forgotten that it is not defamatory to state truthfully of a business man that he will not employ the members of a trades union in his business.[1]

[1] *Cf. infra*, p. 194, footnote.

In the past two years the Congress has continued to press for the desired amendments in the law but the government has declined to recede from the position taken in 1921.

### *The Right to Strike*

Organized labor in Canada, as the solicitor for the Trades and Labor Congress says, "has a right to strike in the pursuit of its demands, so long as the object is to promote the welfare of those involved rather than a malicious intention to injure those against whom the strike is directed." The Criminal Code provides (Sec. 590) that:

> No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute.

The lawful purposes of a trade union are indicated in the definition of "trade combination" in the Criminal Code:

> "Trade combination" means any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman in or in respect of his business or employment, or contract of employment or service.

A strike to raise wages, or lower hours, or for any other purpose within the terms of the definition is lawful. But there has been extensive use of the injunction, especially since the late years of the war. Peaceful picketing has been enjoined frequently. Labor in the United States still has the letter of the law in Section 20 of the Clayton Act, which was thought to have made peaceful picketing lawful until two decisions of the United States Supreme Court made it of no significance.[2] But in Canada the peaceful picketing pro-

[1] American Steel Foundries *v.* Tri-City Central Trades Council, 257 U. S. 184; Truax *v.* Corrigan, 42 S. C. 124.

vision, granted in 1876, was dropped from the Criminal Code in 1892. In this situation it is difficult for a trade union to make effective use of the strike unless it has a monopoly of the supply of labor.

Canadian labor has not been given the protection against civil responsibility for sympathetic strikes afforded by the Trade Disputes Act of Great Britain, which states:

> An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

Mr. O'Donoghue states:

> I am not aware of any law that makes it an offence for workers in one trade to go on strike out of sympathy for their fellow-workers in another trade as long as the object is that mentioned. If the original strike is legal there is no offence committed in assisting.[1]

But the courts have ruled to the contrary. It was held in Rex v. Russell[2] that:

> The immunity provided by Sec. 590 of the [Criminal] Code does not extend to a general "sympathetic" strike. A conspiracy to bring about a strike involving no trade dispute between the strikers and their employers is illegal. The law of Canada applying thereto is the same as it was in England before the Trade Disputes Act, 1906, to which there is no similar enactment in Canada.

And again, in the same case:

[1] *Trades and Labor Congress*, 1920, p. 142.

[2] [1920] 1 W. W. R. 624.

It is lawful for workmen to combine in a strike in order to get higher wages because that would be a combination to regulate or alter the conduct of a master in his employment of his workmen. Persons who aided or encouraged such a strike would not be committing an unlawful act because they were endeavoring to bring about something that is legal. But supposing there is a strike by the moulders in A's foundry and in order to assist the strike the employees of a cartage company combine in a refusal to carry goods to or from A's foundry, or the railway company's employees combine in refusing to receive or handle A's goods; neither of these combinations comes within the protection afforded by Sec. 590.

In 1921 the Dominion Department of Justice gave as its view on the subject:

The decision of the English courts in Lyons *v.* Wilkins [1896] 1 Ch. D. 811, Quinn *v.* Leathem [1901] A. C. 495, and in Giblan *v.* National Amalgamated Laborers' Union, etc. [1903] 2 K. B. 600, make it clear that at common law strikes of this nature are illegal, and assuming that the Criminal Code does not conflict, this is the present position of the law in Canada.[1]

There have been at least five enactments which have placed definite restrictions on the right to strike—the Nova Scotia Mines' Arbitration Act of 1888, the Nova Scotia Industrial Peace Act of 1925, the Dominion Industrial Disputes Investigation Act of 1907, the Ontario Railway and Municipal Board Act of 1913 and the Quebec Municipal Strike and Lockout Act, as amended in 1921.[2]

[1] *Trades and Labor Congress*, 1921, p. 30.

[2] The following laws provide for the voluntary arbitration of industrial disputes, with no prohibition of strikes or lockouts — Dominion Conciliation and Labor Act (R. S. 1906, c. 96), Manitoba Industrial Conditions Act (1919, c. 43; 1920, c. 57), Nova Scotia Conciliation Act (R. S. 1923, c. 247), Ontario Trade Disputes Act (R. S. 1914, c. 145), Quebec Trade Disputes Act (R. S. 1909, Articles 2489-2530) and Quebec Act respecting Professional Syndicates (1924, c. 112).

The Nova Scotia Mines Arbitration Act of 1888 (c. 3) provided that when any dispute between coal miners and their employees as to wages had been referred by either party to the Commissioner of Public Works and Mines, the employees should not strike and the employers should not reduce the wages or lock out their employees until the matter was finally determined by a Board of Arbitrators. This law [1] was repealed by the Industrial Peace Act, 1925 (c. 1), which in its first part reenacted the Dominion Industrial Disputes Investigation Act and in its second provided for the establishment of a permanent arbitration commission with judicial powers which should investigate and render decisions enforceable by law in disputes where conciliation proceedings have failed.

The Dominion Industrial Disputes Investigation Act, passed in 1907 (c. 20), made it unlawful, under penalties, for any employer (defined as including any person, company or corporation employing ten or more persons and owning or operating any mining property, agency of transportation or communication or public service utility, including railways, steamships, telegraph and telephone lines, gas, electric light, water and power works) to declare a lockout or for any employees to go on strike in any industrial dispute prior to or during a reference of the dispute, at the request of either party, to a Board of Conciliation and Investigation.

A new section was added in 1918 (c. 27) providing that when a strike or lockout occurred in any industry and it seemed expedient to the Minister of Labor in the public interest, or for any other reason, he might constitute a Board of Conciliation and Investigation on his own motion, or on application of any municipality interested or of the mayor and without the application of either of the parties to the dispute, or he might recommend the appointment of a commission under the Inquiries Act to enquire into the matter.

[1] Replaced with minor changes by 1890 (c. 7). Largely ineffective.

In 1920 (c. 29) this power was given to the Minister when a strike or lockout seemed to be imminent as well as when it had actually occurred. This amending act also required that both parties should await the delivery to them of the report of the Board of Conciliation before altering their relations.

On October 11, 1918, just one month before the Armistice, the government issued an order-in-council prohibiting strikes and lockouts in industries within the scope of the Industrial Disputes Investigation Act and in connection with the operation of railways, for the duration of the war. This order-in-council (P. C. 2525) stated that a Board of Appeal had been established, to which resort might be had when any interested party felt aggrieved by the decision of any Board of Conciliation under the Industrial Disputes Investigation Act, and that the Canadian Railway War Board, with the assent of representatives of the organized bodies of railway employees, had constituted a Board of Adjusters for the settlement of disputes that might arise in railway work. While these made provision for the adjustment of matters of dispute, no provision had been made to enforce obedience to or compliance with the orders or decisions of the board, nor was there any prohibition of strikes or lockouts after report had been made by a Board of Conciliation. And since strikes and lockouts would seriously interfere with work essential to the efficient performance of Canada's duty in aiding in the effective prosecution of the war, it was necessary and advisable, under the powers conferred by the War Measures Act of 1914, that strikes and lockouts in connection with such industries or railway operations should be absolutely prohibited during the continuance of the war. The regulations to this end provided a penalty not exceeding $1,000, or six months' imprisonment, or both fine and imprisonment, for employers or employees inciting, ordering or participating in a lockout or strike; for employers

discharging or refusing to employ workers by reason of membership in trade unions or for legitimate trade-union activities outside of working hours; and for workers, in exercising their right to organize, using coercion or intimidation of any kind to influence persons to join their organization. Decisions or orders of any Board of Conciliation, if not appealed from within 30 days, of the Board of Appeal or the Board of Adjusters were binding upon all affected and those failing or refusing to comply were liable to the penalties specified.[1]

President Tom Moore of the Congress immediately issued a statement in protest.[2] "The good-will of a nation's workers," he said, "can be obtained by fair treatment, but cannot be forced by Order-in-Council," and he pointed out that while the government was compelling arbitration with private employers it was refusing arbitration to its own employees in a number of cases. The government in an official explanation stated that the "Order-in-Council only carried into effect the War Labour Policy, already approved by representatives of organized labor, and of employers in Canada." Mr. Moore replied that agreement for voluntary coöperation did not imply acquiescence in compulsion.[3] On November 19, 1918 the order-in-council was repealed.[4]

The Industrial Disputes Act was discussed at almost every session of the Trades and Labor Congress after its passage, and for many years the Congress asked for its repeal. In 1919 however the Congress, while maintaining its attitude that the clauses relating to penalties for striking pending creation of boards or prior to their decisions should be repealed, requested the government to extend the operation of

[1] *Labour Gazette*, vol. xviii, p. 983.

[2] *Trades and Labor Congress*, 1919, p. 26.

[3] *Ibid.*, p. 27.

[4] *Labour Gazette*, vol. xviii, p. 1101.

the act to employees on publicly owned utilities, including civic employees. A resolution in 1920 asked that the act be extended to all industries upon the application of either an organization involved, an employer or a municipality and that the compulsory clauses restraining the right to strike pending decision of a board be eliminated so " as to preserve full liberty of workers and employers during sitting of the board." [1]

An important decision by the Divisional Court of Ontario in Rex *v.* McGuire [2] held that

> the prohibition by the statute of strikes or lockouts " prior to or during a reference " of the dispute to a board, does not apply only to cases in which one of the parties to the dispute has made application for the appointment of such a board, but makes all strikes and lockouts illegal until there has been such a reference and the board has made its report thereon.

The constitutionality of the act was questioned in August, 1923, and the Privy Council declared it *ultra vires* of the Dominion Parliament in 1925.[3] Since then the Dominion has passed a substitute measure (1925, c. 14) limited to matters not within provincial jurisdiction and British Columbia has enacted legislation making the new Dominion law applicable to matters within the legislative competence of the province. Ontario and Saskatchewan are considering similar action.

The Ontario Railway and Municipal Board Act of 1913 (c. 37) provided that a dispute between a railway, state railway or public utility company and its employees might be submitted to the Ontario Railway and Municipal Board but the request for the offices of the board in a dispute must

[1] *Trades and Labor Congress*, 1920, p. 182.

[2] [1908] 16 O. L. R. 522.

[3] *Cf. supra*, p. 54.

be accompanied by an agreement not to strike or lockout during the investigation.[1] When a strike or lockout had occurred or was threatened, the board was to endeavor by mediation to effect a settlement.

In 1921 (c. 46) the province of Quebec passed the Municipal Strike and Lockout Act, applying to every municipal corporation having a fire, public safety, water-works or sanitary incineration service in which at least ten persons were employed. It was declared to be unlawful for an employer to declare or cause a lockout or for employees to strike on account of any dispute as to the price to be paid for work done or because of the dismissal of an employee on account of membership in any labor union before such dispute had been submitted to a board of arbitration. In the next year an amendment (c. 40) lessened the scope of the act by making it apply to services employing twenty-five or more workers, rather than ten as in the original act.

In April, 1925, a decision under this law, given in the Superior Court at Montreal, declared illegal and null and void certain orders of the City Council of Montreal, forbidding members of the city police force to be members of Policemen's Federal Labour Union No. 62.[2] Apparently city policemen in Quebec may join trade unions but this privilege is denied the police in the employment of the Dominion Government. An order-in-council (P. C. 2215) of October 7, 1918, directed members of the Royal North-west Mounted Police and the Dominion Police not to hold membership in any trade union or employers' organization. The Trades and Labor Congress protested against this regulation and they also objected to the decision of a commission which investigated the policemen's union of Toronto,

[1] In the original act of 1906 (c. 31) the filing of this agreement was not compulsory.

[2] *Labour Gazette*, vol. xxv, p. 539.

that forbade the police to organize or to affiliate with the Congress.[1] The government replied that the right to organize could not be extended to government employees.[2]

### *Incorporation of Trade Unions*

While the Trade Unions Act of 1872 was limited in its application to unions registered under its provisions, the registration feature of the legislation has been of little importance. Up to 1923 thirty-one unions had registered under the act and of these only eleven were thought to be in existence at that time.[3] The unions have feared that anything in the nature of incorporation would result in constant inroads upon their treasuries to satisfy adverse legal decisions. This unwillingness to register under the act deprived unions of its protection both against the charge of conspiracy and violation of agreements or trusts. But most of the protective clause of the Trade Unions Act was inserted in the Criminal Code of 1892, by virtue of which the protection against the charge of conspiracy, granted in 1872 to registered unions, was extended to all. It still left unregistered unions in restraint of trade without recourse to the courts for the enforcement of agreements.

This attitude towards registration has not been consistently maintained. We find the Trades and Labor Congress of 1886 calling upon the Dominion Government "to at once appoint the officers required by the Trade Unions Act to give it practical effect so that labor organizations can take advantage of such act by incorporating under its provisions."[4] In 1891 and 1892, it was resolved—

[1] *Trades and Labor Congress*, 1920, pp. 15, 100.

[2] *Labour Gazette*, vol. xx, p. 372.

[3] *Winnipeg Trades and Labor Council Year Book*, 1923, p. 61.

[4] *Trades and Labor Congress*, 1886, p. 39.

that the provincial legislatures should be requested to amend the laws governing incorporation so as to facilitate the incorporation of trades' unions and labor societies, whether of a protective, benevolent or beneficiary nature, believing that these bodies are equally entitled to legal recognition with any other body.[1]

In 1892 (c. 39) Ontario acceded to this request, the provision now being found in the Ontario Insurance Act (R. S. O. 1914, c. 183, s. 72). Under this section such unions as have insurance or benefit funds for their own members may register. Registration constitutes incorporation, and a number of trade unions are so registered but are not aware of the fact that they have thus become corporate bodies. The Ottawa Typographical Union in a suit sought to have the service of a writ set aside on the ground that it was not an incorporated body, but on it appearing that the union was registered under the Insurance Act, the attempt failed.

In 1895 the executive committee of Quebec reported that "a law relating to the incorporation of benevolent, national trade unions and labor associations" had passed the legislature of that province but had been rejected by one vote in the legislative council.

A decade later the attitude was just the reverse. The Quebec executive committee reported in 1903 and 1904 that the provincial government had granted their request that legislation concerning mutual benefit societies should not be applied to trade unions.[2] Soon after, the Congress protested against a bill for the incorporation of trade unions introduced in the Quebec Legislature.[3] In 1920 the Congress gave some attention to an "employers' campaign for incorpora-

[1] *Trades and Labor Congress*, 1891, p. 17; 1892, p. 17.

[2] *Ibid.*, 1903, p. 23; 1904, p. 23.

[3] *Ibid.*, 1905, p. 59; 1906, p. 16.

tion of trade unions in Canada" and it was decided that "all organizations affiliated should use their best efforts to instil into the minds of their membership the necessity of opposing any law which would make compulsory the incorporation of trade unions in Canada." [1]

Some of the advantages the unions expected from their rejecting the registration features of the Trade Unions Act have not materialized. Suits for damages have been brought against unions and damages awarded, and it has been held that all the financial resources of the union are available to satisfy the decision.[2] In the Metallic Roofing case,[3] the president of the local union, the Amalgamated Sheet Metal Workers' International Association, applied to have service of the writ of summons set aside on the ground that the union was not a body corporate or a partnership and could not be served in that manner. The appeal was allowed. The plaintiffs then secured an order for representation, and the right to sue in a representative action was granted them.

As against this, it has been held that an unincorporated union cannot be sued. In 1918, in Williams and Rees *v.* Local Union No. 1562, United Mine Workers of America, and Young *et al.*, two coal miners were awarded damages against the union and individual defendants for refusing to admit them to membership in the union and so preventing them from obtaining employment. The Supreme Court of Alberta dismissed the appeal on an equal division of the Court,[4] but the Supreme Court of Canada, by a majority of three to two, allowed the union's appeal and by unanimous judgment dismissed the appeal of two individual defendants.[5]

[1] *Ibid.*, 1920, p. 70.

[2] *Cf. supra*, pp. 140, 144.

[3] C. R. [1909] A. C. 1.

[4] [1919] 45 D. L. R. 150.

[5] 59 Can. S. C. R. 240.

I have no doubt that the local union as an unincorporated and unregistered body was not properly made a defendant, and that services on it must have been set aside had application been made for that relief. In my opinion judgment against the local union in its adopted name cannot be maintained.[1]

In 1924 an injunction was granted at Hamilton to restrain six moving-picture projectionists from picketing a theatre and enlargement of the proceedings to include other members of the union was also granted. When the lower court refused to strike out the name of the union as party defendant the union appealed. The decision was in favor of the union on the grounds that it was not incorporated and was not registered under the Trade Unions Act.[2]

Chase *et al. v.* Starr is a recent case on the enforcement of a trust by an unregistered union.[3] This case in the Court of King's Bench at Winnipeg was brought in 1923 by the plaintiffs in their own behalf and on behalf of all the members of the International Brotherhood of Locomotive Engineers and all other members of the General Committee of Adjustment in the employ of the Canadian National Railways for an accounting and payment as to moneys received by the defendant while holding office as secretary-treasurer of the General Committee of Adjustment. There was a counter-claim by the defendant for the payment of certain sums.

It was argued for the defendant that "the plaintiffs were admittedly an unregistered trade union, with a constitution which included many purposes and objects in restraint of trade; and consequently they were an unlawful organization and could not enforce any rights in a court of justice." Mr. Justice Galt stated in his judgment that "it would appear

[1] *Labour Gazette*, vol. xix, p. 1535.

[2] *Ibid.*, vol. xxv, p. 92.

[3] [1923] 33 Man. R. 26.

that Parliament considered all trade unions, *eo nomine,* to be unlawful combinations 'but for this Act' [Trade Unions Act of 1872]." [1] But he adopted the view expressed by Lord Macnaghten that a trade union may be lawful quite apart from the immunity granted by the Trade Union Act and that the law is open to the members of such societies for the purpose of enforcing their contractual rights.[2] Justice Galt found however that some of the provisions of the Brotherhood relating to strikes were "in direct restraint of trade and render the plaintiffs an unlawful trade union to the extent of preventing them enforcing rights in a court of law." Action and counterclaim were dismissed with costs.

This decision was reversed by the Manitoba Court of Appeal on September 24, 1923.[3] In delivering judgment, Chief Justice Perdue said,

On the pleading and evidence placed before the court in this case, I do not think it should be held, in the present condition of the law, that this union is an organization so tainted with illegality that the court will not lend its assistance to recover trust moneys of the union unjustifiably withheld by its late treasurer.

Mr. Justice Dennistoun held:

In determining what is now public policy in respect to the operations of trade unions, in respect to lawful and unlawful strikes, and in respect to collective bargaining, care must be taken to consider the effects of recent legislation. Collective bargaining, now approved by provincial legislation [Industrial Conditions Act, 1920, c. 57] would seem to involve reason-

[1] *Ibid.,* at p. 36.

[2] Russell *v.* Society of Amalgamated Carpenters and Joiners [1912] A. C. 421 at p. 429.

[3] [1923] 33 Man. R. 233.

able coercive measures as a matter of internal regulation of the conduct of members.

This case was taken to the Supreme Court of Canada, which upheld the decision of the Manitoba Court of Appeal.[1]

The National Catholic Unions of Quebec are not opposed to incorporation and in 1924 (c. 112) the Quebec Legislature in "An act respecting professional syndicates" authorized the incorporation of trade unions for "the study, defence and promotion of the economic, social and moral interests of the profession." This act provided that twenty or more persons engaged in the same or similar occupations might petition the Lieutenant-Governor for incorporation as a professional syndicate. Official authorization was to be gazetted and subsequent changes in the by-laws were to be approved by the Lieutenant-Governor in Council. It was required that the directors and two-thirds of the members should be British subjects, a foreign membership of more than one-third involving dissolution.

The rights and privileges of syndicates were enumerated as follows: they might acquire legal title to property; establish mutual benefit and pension funds; devote a part of their resources to the erection of cheap dwellings, and the purchase of grounds for workmen's gardens, and physical and hygienic training; establish information offices in regard to employment; establish provident institutions and educational undertakings; subsidize or assist cooperative societies for production and consumption; purchase, to resell, lease or lend to their members, all necessaries for the maintenance of a family or for the exercise of their profession; assist in the sale of the work of their members; deposit their mark or label; and enter into contracts or agreements, particularly with reference to the collective conditions of labor.

[1] [1924] 4 D. L. R. 55.

Three or more professional syndicates might "concert in the study and defence of their economic, social and moral welfare and for such purpose form a union or federation." Such federations could make their own rules as to representation in the joint administrative council. They had the same rights and privileges as individual syndicates and in addition could institute councils of conciliation and arbitration which should, at the request of the interested parties, render decisions on disputes submitted to them, such decisions to have the force of a final judgment after submission to the superior court.

Sections were included on the collective labor agreement, defined as "a contract respecting labour conditions made between the representatives of a professional syndicate, or of a union, or of a federation of syndicates, on the one hand, and one or more employers, or representatives of a syndicate, union or federation of syndicates of employers, on the other hand." The collective labor agreement, in writing, was to be binding on the employers and employees concerned unless they resigned from the group within eight days after the agreement had been deposited with the Minister of Public Works and Labor, binding on members of a group later joining in the agreement and also on those who later joined a group which had been party to the agreement.

### FREEDOM OF ASSOCIATION FOR EMPLOYERS

Employers in Canada have achieved a high degree of organization in trade matters, but there has been little permanent combination for the purposes of industrial relations.

The constitution of the Employers' Association of Toronto, organized in 1902, included the following as among the objects of that body:

The adoption of a uniform legitimate system whereby members may ascertain who is, and who is not, worthy of their employ-

ment. . . . To endeavor to make it possible for any person to obtain employment without being obliged to join a labour organization, and to encourage all such persons in their efforts to resist the compulsory methods of organized labour.[1]

The Canadian Manufacturers' Association has a department of industrial relations and the Employers' Association of Manitoba, organized in 1920, declared for the "open shop" principle but stated that the Association was not intended to combat unionized labor.[2] The Canadian Founders and Metal Trades Association, according to the report[3] of the Department of Labor, seeks to secure for employers and employees freedom of contract in the matter of employment, irrespective of membership in this or any kindred association; to discountenance conditions which are not just and which will not allow a workman to earn a wage proportionate to his productive capacity, and to oppose restriction of output, sympathetic strikes and boycotts; to harmonize differences between employers and employees so that justice may be done to both, to prevent interference with those seeking work and to avert industrial disturbances. The Western Coal Operators Association proposes to "discourage lockouts, strikes and boycotts and all kindred movements." The Shipping Federation of British Columbia plans to oppose "any injurious encroachments of organized unions affecting shipping interests." The Association of Canadian Building and Construction Industries, the Cloak Manufacturers' Protective Association, and the Canadian Society of Domestic, Sanitary and Heating Engineers deal with labor questions or endeavor to promote better relations between employers and workers. Three Canadian associa-

[1] *Labour Gazette*, vol. iii, pp. 375-6.

[2] *Ibid.*, vol. xx, p. 498.

[3] *Fourth Report on Organization in Industry, Commerce and the Professions*, Department of Labour, Ottawa, 1925.

tions of master printers are identified with the United Typothetae of America, an organization which gives close attention to questions of industrial relations.

Temporary combinations of employers to meet serious labor situations rather than permanent organizations have been the rule. The Royal Commission on Industrial Relations reported in 1919:

> We found that the employers had several forms of association . . . but with few exceptions we were told they were not for the purpose of arranging or controlling hours, wages or general works conditions.[1]

There have been few blacklisting cases in the courts. A charge of blacklisting against certain Toronto employers late in 1906 was said to be the first charge of the kind ever preferred in Canada,[2] although the *Labour Gazette* reported a case in Vancouver in 1904.[3] But the Toronto case, in which a striking garment worker charged several firms with conspiring to prevent him from obtaining employment in his trade, was dismissed. The subject has not received much attention from the Trades and Labor Congress. The executive of the Congress was instructed in 1913 to seek legislation against discrimination on account of trade-union membership and blacklisting,[4] and in 1916 it was resolved that "this convention take action looking to the enactment of legislation prohibiting blacklisting."[5]

The restrictions on the right to strike, imposed by various laws previously noted,[6] have also applied to employers with respect to lockouts. The chief legal restrictions upon the

[1] *Royal Commissions on Industrial Relations*, 1919, p. 18.

[2] *Labour Gazette*, vol. vii, p. 927.

[3] *Ibid.*, vol. iv, p. 1270.

[4] *Trades and Labor Congress*, 1913, p. 122.

[5] *Ibid.*, 1916, p. 184.

[6] *Cf. supra*, p. 167.

right of association for employers have been the various enactments directed against trade combinations. This legislation, which took its rise in 1889, affected trade unions as well as trade combinations [1] until in 1900 combinations of workmen "for their own reasonable protection as such workmen" were exempted.

The law of 1889 (c. 41) arose out of the report of a select committee appointed by the House of Commons in 1888 "to examine into and report upon the nature, existence and effect of certain combinations said to exist with reference to the production and sale or manufacture and sale in Canada of any foreign or Canadian products." This measure, entitled "An act for the prevention and suppression of combinations formed in restraint of trade," provided that:

1. Every person who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, unlawfully, (a) To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or (b) To restrain or injure trade or commerce in relation to any such article or commodity; or (c) To unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or (d) To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property,—

Is guilty of a misdemeanor and liable, on conviction, to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to imprisonment for any term not exceeding two years; and if a corporation, is liable on conviction to a penalty not exceeding ten thousand dollars and not less than one thousand dollars.

[1] *Cf. supra*, p. 133.

The words "unduly" and "unreasonably" were not in the bill as drawn but were inserted by the Senate.

Bills to prohibit combination in any degree by striking out the words "unduly" and "unreasonably" were introduced in the sessions of 1890, 1891 and 1894 but it was not until the session of 1899 (c. 46) that the words were deleted by an amendment to the Criminal Code. They were restored however by an amendment of 1900 (c. 46). The Criminal Code of 1892 incorporated as Section 520, Section 1 of the law of 1889, quoted above, and it defined "conspiracy in restraint of trade" and "trade combination."

It was held in Lefebvre *v.* Knott [1] in 1907 that a lockout agreement by an employers' association following a demand from the employees' trade union for an increase of wages was not a contravention of this section of the Criminal Code, although the contracting parties thereby agreed to discharge from their employ all members of the employees' union and not to reemploy them on a higher scale of wages than the rate prevailing at the date of the agreement. And, further, that on proof of damage to the other signatories of the agreement through breach of the conditions a civil action lay upon the promissory note given by the defaulting subscriber to trustees for the association to ensure the carrying out of the agreement.

As a further aid in the suppression of combinations in restraint of trade a section was inserted in the Customs Tariff of 1897 (c. 16, s. 18) which empowered the Governor-in-Council to commission any judge of the Supreme Court or Exchequer Court of Canada or of any superior court in any province of Canada to enquire into trusts and combines whenever there was reason to believe that such were unduly enhancing prices. If it appeared upon the report of the judge that the disadvantage to the consumer was facilitated

[1] [1907] 13 Can. Cr. Cas. 223.

by the customs duties, the Governor-in-Council was empowered to place the article on the free list or to reduce the duty.

In 1903, after an enquiry into an alleged exclusive contract system by the American Tobacco Company of Canada and the Empire Tobacco Company, further legislation was passed in an act to amend the Inland Revenue Act, 1904 (c. 17). This act declared that if manufacturers holding inland-revenue licenses should sell goods under a monopolistic form of contract designed to prevent the purchaser from buying from any other manufacturer or dealer, their licenses should be forfeited.

An amendment to the anti-combines clause of the customs tariff, inserted in the consolidating statute of the second session of 1907 (c. 11, s. 12), empowered the Governor-in-Council to act without instituting the enquiry called for in the section inserted in 1897. This amendment authorized the Governor-in-Council to reduce or remove duties where the existence of a combine facilitated by customs duties had been established as a result of a judgment of the Supreme Court or Exchequer Court of Canada or of any superior court or circuit, district or county court in Canada.

In the five or six years after 1900 there was a period of considerable activity directed toward the suppression of combinations in restraint of trade and some convictions were secured in prosecutions under Section 498 of the Criminal Code.[1] It seems, however, that the section was not considered a deterrent for in 1908, when a bill was introduced to give wholesale and retail merchants the exemption from the combines legislation granted to trade unions in 1900, the

[1] In 1905 members of three associations in the plumbing trade of Toronto (an association of supply houses, an association of master plumbers and a plumbers union) were prosecuted under this section. *Vide Labour Gazette,* vol. vi, pp. 773, 905.

Canadian Manufacturers' Association declined to support the proposed amendment on the ground that "the opening up of the question might result in the strict enforcement of the law against certain legitimate trade agreements and understandings at present countenanced." [1]

In any case, associations of this kind began to be abandoned in favor of consolidations, and in 1910 (c. 9) the Combines Investigation Act was passed. Under this law if six or more British subjects, residents of Canada, believed that a combination had enhanced prices or restricted competition to the detriment of consumers or producers they might apply in writing to a judge for an order directing an investigation into the alleged combine. If it appeared that there were reasonable grounds for the charge and that it was in the public interest that an investigation should be held, the judge was required to order an investigation by a board composed of three persons—one nominated by the complainants, one by the parties complained of, and the third, the chairman, a judge chosen by the other two. The penalties provided were those established by previous legislation—removal or reduction of customs duties, revocation of letters patent and prosecution under the criminal law.

In view of the rise in the cost of living which followed the outbreak of the war, an order-in-council was passed (November 10, 1916), by authority of the War Measures Act, 1914, which forbade combinations among persons or corporations dealing in any "necessary of life." The order-in-council practically reproduced Section 498 of the Criminal Code with the omission of the words "unduly" and "unreasonably" and so made any limitation of transport facilities or production or competition illegal. Accumulation beyond reasonable requirements was forbidden and provision was made for investigation by the Minister of

[1] *Industrial Canada*, October, 1908, p. 218.

Labor and by municipal authorities as to supplies of any "necessary of life" and prices. The order-in-council superseded Section 498 of the Criminal Code in its application to "necessaries of life." Combinations of workmen were excluded from the operation of the measure as in the Criminal Code.

In 1919 (c. 37) a law was passed establishing a Board of Commerce to administer the Combines and Fair Prices Act (c. 45) passed in the same year. The latter measure empowered the Board of Commerce to prohibit the formation and the operations of "combines." Any adult British subject, resident in Canada, could apply to the Board for an order directing an investigation into an alleged combine, or the Board, when it considered that action to restrain or prohibit the formation or operation of a combine would be in the public interest, could of its own motion hold an investigation and require any person complained of to appear and to show cause why the Board should not issue an order requiring him under penalty to desist from the practice charged against him and from any other acts which the Board might deem it necessary to prohibit. The act empowered the Governor-in-Council to admit any article free of duty or to reduce the duty if satisfied as a result of any such investigation that a combine existed at the expense of consumers, and in case any owner or holder of a patent should use his rights to unduly limit production or restrain trade, the Minister of Justice, on report of the Board of Commerce, could make application to the Exchequer Court of Canada to revoke the patent. It was expressly stated that the law should not be construed to affect the Trade Unions Act in any way, and the Combines Investigation Act (1910, c. 9) was repealed.

The sections on fair prices forbade unreasonable accumulation or withholding of any "necessary of life," and it

was required that any excess amount held by a household or as stock in trade should be offered for sale at "reasonable and just" prices. The Board was empowered to restrain and prohibit violations of the act, the making of unfair profits, and all practices "calculated to unfairly enhance the cost or price of necessaries of life." The Board could require the return of information from cold storage plants, packing houses, canneries, factories, mines, warehouses, and other premises, and if necessary could investigate any business and require persons concerned to attend and give evidence under oath. When in the opinion of the Board an offence had been committed under this part of the act it could place the matter before the attorney-general of any province concerned for his action or might recommend a prosecution, or the Board could itself make a finding as to the guilt of the party concerned, and might order or prohibit under penalty any act or practice relevant to the offence. No prosecution for an offence under this part of the act was permitted otherwise than at the instance of a provincial attorney-general without the written authority of the Board. Provision was made that any question of law or of jurisdiction should be referred to the Supreme Court of Canada.

The Canadian Manufacturers Association held that this legislation "in essence involved the destruction of the principle of private property and was thus a violent and flagrant invasion of property and civil rights in each and every province in which such an interference might be attempted," and further, that "in effect the Dominion Parliament presumes to confer greater authority on the Board of Commerce than it possessed under the provisions of the British North America Act." [1]

In 1921 a case arose in regard to an order of the Board limiting the profits that might be taken legally by certain

[1] *Industrial Canada*, December, 1921, p. 67.

retail dealers in clothing. The Supreme Court divided equally on the questions submitted, and they were referred to the Privy Council. In a judgment delivered November 11, 1921, their Lordships held that the Parliament of Canada did not have legislative capacity under the British North America Act to establish the Board and give the authority to make the order.[1]

This decision left Canada without any legislation against combines, and in 1923 the Mackenzie King Government passed the Combines Investigation Act, 1923. This measure repealed the inoperative Board of Commerce Act and the Combines and Fair Prices Act, a step which revived Section 498 of the Criminal Code relating to combinations in restraint of trade,[2] and made it a criminal offence for any person to be a party or privy to or knowingly to assist in the formation or conduct of a combine operating to the detriment of the public.

In introducing the measure in the House, Prime Minister Mackenzie King, through whose offices mainly the Combines Investigation Act was passed in 1910 when he was Minister of Labor, said of the earlier law that "obliging individuals in the first instance to associate themselves together and make out a prima facie case before a judge discouraged in large measure any investigation." To overcome this the new law permitted any six persons who believed that a combine was operating in restraint of trade to submit a statutory declaration direct to the registrar to be appointed under the act. If after investigation the registrar should conclude that such a combination was in operation the act required him to report to the Minister of Labor who was then to ask the Governor-in-Council to appoint a commissioner to make a larger and more careful enquiry. A pro-

[1] *Labour Gazette*, vol. xxi, p. 1508.

[2] *Cf. supra*, pp. 182-83.

vision was included that no prosecution would follow except at the instance of the Attorney General of a province or the Solicitor General of the Dominion. The Governor-in-Council was given power to reduce or abolish customs duties if it should appear that a combine was profiting by virtue of the tariff and also to revoke any patent being used to limit competition to the detriment of the public.

Section 498 of the Criminal Code was declared *ultra vires* of the Dominion Parliament by a judgment delivered on April 18, 1923 in the First Divisional Court of Ontario. In giving this judgment the Chief Justice of Ontario held that the decision of the Judicial Committee of the Privy Council in the Board of Commerce case warranted the conclusion that the Dominion Parliament was not competent to enact laws to prohibit undue combination and hoarding so as to restrict the liberty of the inhabitants of a province.[1] The Deputy Minister of the Dominion Department of Justice was of the opinion that the question was not governed by the decision of the Privy Council, and advised the government to proceed on the assumption that the enactment was *intra vires*.[2]

SUMMARY

In Great Britain the common-law doctrine that all combinations to raise wages were conspiracies was strengthened by the combination laws enacted at various times down to the early 1800's. But in the session of 1825 the combination acts were repealed and some measure of freedom of association was established.

The Molestation of Workmen Act of 1859 provided that workmen should not be considered guilty of molestation or obstruction under the law of 1825 by reason only of endeavoring peaceably to persuade others to cease or abstain

[1] *Labour Gazette*, vol. xxiii, p. 453.

[2] *Ibid.*, vol. xxiii, p. 572.

from work. The Trade Union Act of 1871 declared that trade unions were not illegal combinations in restraint of trade and legislation of 1875 entirely freed unions from the law of conspiracy in its criminal aspects and legalized "watching and besetting." After the Taff Vale decision in 1901, the Trade Disputes Act of 1906 annulled the law of civil conspiracy. Unions were exempted from responsibility for damages on account of the wrongful acts of their agents and sympathetic strikes and peaceful picketing were legalized. In short, in Great Britain trade unions, employers' associations, strikes (including sympathetic strikes), lockouts, and peaceful picketing have been recognized by law. The State interferes only when violence and intimidation are involved.

The early trade unions of the United States had to contend with the common-law doctrine of the illegality of combinations to raise wages, but after the 1830's such combinations were not generally regarded as conspiracies, which brought American trade unions to the status attained in England in 1871. Commons and Andrews state[1] that unions in the United States were prosecuted for conspiracy later, but that in such cases acts of violence were usually involved. They add, however, that the British unions gained by the law of 1871 a clear-cut declaration that the common-law doctrine of conspiracy did not apply to them while in the United States it was only modified by common consent and favorable construction. In the 1880's the doctrine was revived in the United States. Business was recognized as property and this afforded an easy transition to that use of injunctions in labor disputes which has become so general in the United States.

Toward the end of the century came the development of

[1] J. R. Commons and J. B. Andrews, *Principles of Labor Legislation* (New York, rev. ed., 1920), pp. 94, 103.

the restraint-of-trade doctrine. The Sherman Anti-Trust Act of 1890 and the Danbury Hatters' case in 1908, seemed to render all strikes, and perhaps all labor organizations, illegal. When the Clayton Act was passed in 1914, organized labor believed it had secured the right of peaceful picketing, trial by jury in contempt cases, and had been placed outside the combination law, but this confidence has been shaken. Justice Taft said in Truax v. Corrigan:[1] "We have considered the clauses of Section 20 of the Clayton Act, sometimes erroneously called the picketing clauses. . . . We held that under these clauses picketing was unlawful and that it might be enjoined as such, and that peaceful picketing was a contradiction in terms which the statute sedulously avoided."

Commons and Andrews also state[2] that the Clayton Act "probably has not placed labor outside the scope of the anti-trust law, but has eliminated the danger of an extension of the restraint-of-trade doctrine to a possible outlawing of all labor organizations."

It is evident that labor has much more to fear from the doctrine of conspiracy than from the combination laws. Strikes, boycotts and picketing have often been held illegal and injunctions are issued restraining workers from striking. Members of unions are held to the unlimited liability of partnerships, while in England employers' associations and unions are exempted from liability in tort for wrongful acts.[3]

At first Canada followed the British precedent with some reservations. A law of 1869, taken mainly from a British act of 1861 (c. 100) provided penalties for forcibly and unlawfully interfering with seamen and two years' imprisonment

[1] 42 S. C. 124 (Dec. 19, 1921).

[2] Commons and Andrews, *op. cit.*, p. 96.

[3] *Ibid.*, p. 124.

for violence or threats of violence in pursuance of any unlawful conspiracy. The British Trade Union Act, enacted into Canadian law in 1872, provided that the purposes of a trade union should not be regarded as unlawful merely because of their being in restraint of trade but it was largely nullified by a companion act, also taken from Great Britain, which provided punishment for certain specified offences in trade disputes. This measure did not repeal the provisions with respect to violence and threats of the law of 1869, as its British original repealed the corresponding provisions of the British law of 1861. The British Conspiracy and Protection of Property Act was partly reproduced in 1876 and so freed Canadian unions from the criminal aspects of the conspiracy law except for offences indictable by statute and certain specified offences punishable under this act itself. It granted the right of peaceful picketing.

In 1877 Canada reproduced a portion of the English law with reference to breach of contract which made certain acts in trade disputes illegal for public utilities employees. When the statutes were revised in 1886 the word "indictable" in the law of 1876 was changed to "punishable," thus bringing all trivial offences punishable by statute within the law of conspiracy. In 1887 the law of 1869 with respect to intimidation was amended so as to provide more stringent regulation of picketing work at or on board vessels. Anti-combines legislation enacted in 1889 practically obliterated the protection afforded by the Trade Unions Act against the law of conspiracy in restraint of trade but this ground was recovered, the section on this point being omitted when the Criminal Code was consolidated in 1892. At the same time the protective clause of the Trade Unions Act was extended to all trade unions whether registered under the act or not. But the peaceful picketing clause of the law of 1876 was omitted from the Code. A law of 1900 gave trade unions

specific exemption from the anti-combines legislation of 1889 and this exemption has been continued in all subsequent legislation of the kind.

After the Taff Vale decision in 1901 injunctions and damage suits began and in 1909 Mr. Justice Mathers held that the omission of the peaceful picketing clause from the Criminal Code indicated the intention of Parliament that attending for the purpose of obtaining and communicating information should not deprive "watching and besetting" of its wrongful character.

But in 1910 the Minister of Justice gave an opinion that "besetting and watching" merely to communicate information would not constitute an offence and that the reinsertion of the peaceful picketing clause in the Criminal Code was therefore unnecessary. During the war there were more damage suits and injunctions. In vain the unions urged the federal and provincial governments in turn to enact the British Industrial Disputes Act of 1906 into Canadian law and in 1921 the Dominion Government, on the advice of the Department of Justice, refused to legalize peaceful picketing and sympathetic strikes. The government's opinion with regard to picketing is reminiscent of Chief Justice Taft's statement in the American Steel Foundries case [1] that "the name 'picket' indicates a militant purpose inconsistent with peaceful persuasion."

In short, the legal status of Canadian trade unions is much the same as that of the unions in Great Britain before the Industrial Disputes Act. They seem to have adequate protection from the combination laws but they are open to constant attack on charges of criminal and civil conspiracy. There has been frequent use of the injunction and union funds are liable to seizure to satisfy damage actions. Fear

[1] 257 U. S. 184, American Steel Foundries *v.* Tri-City Central Trades Council.

of inroads on their funds has prompted the unions not to register under the Trade Unions Act. But the Catholic unions of Quebec are not opposed to incorporation and numbers of them have been incorporated under recent legislation of that province. Unions have a legal right to strike for certain stated objects but picketing and sympathetic strikes have been held illegal by the courts. The right to strike is also restricted by Dominion and provincial conciliation legislation so that despite the legality of the strike the unions are much hampered in its use. The Trades and Labor Congress has been advised by its solicitor that every Canadian union is open to prosecution as an unlawful association for seeking to bring about " any governmental, political, social, industrial or economic change " by the use of force.[1] While British Columbia by a dead-letter measure has forbidden the injunction and has legalized peaceful picketing and the sympathetic strike, an Ontario judge has recently held that the injunction is abhorrent to the law of that province.[2]

Employers' organizations have been little used for the purposes of industrial relations. They are subject to a considerable body of combines legislation from which trade unions are exempt.

[1] *Cf. supra*, p. 152.

[2] According to a judgment rendered since going to press the British Columbia law would seem to be ineffective from the labor viewpoint even if within provincial competence. (*Cf. Labour Gazette*, vol. xxvi, p. 624.) And there has been an important interpretation of the law on picketing. In June, 1926, the Supreme Court of Canada held it unlawful under Section 501 of the Criminal Code to picket for the purpose of persuading employees. (*Cf. Labour Gazette*, vol. xxvi, p. 621.)

## CHAPTER VI

### A Wage Sufficient for Reasonable Living

"The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country." (Treaty of Peace: Article 427,3.)

Government action in Canada for the regulation of wages in the interests of the employed has been in two directions—(1) legislation and administrative regulation to ensure the payment of a "fair wage" to persons employed on government works, on undertakings receiving subsidies from the public funds, and in the manufacture of government supplies; and (2) minimum wage laws for the protection of women workers.

Provision for fair wages on government contracts is one of the few fields of labor legislation in which the Dominion Government preceded the provincial legislatures. In England in 1884 the Trade Union Parliamentary Committee tried to induce the stationery office to adopt the union rates of the London compositors as a basis for the government printing contract, and when their request was disregarded "fair wages" became one of the campaign cries of the election of 1886. The election of a champion of trade-union wages to the London School Board in 1888 resulted in the adoption of a fair wage policy by the Board in 1889 and the House of Commons, in view of the strength of the agitation and the disclosure before the House of Lords Sweating Committee of the abuses arising from subletting, passed a fair-wage resolution in 1891.

The campaign in England encouraged organized labor in Canada to press for the adoption of a fair-wage policy. In 1890 the Trades and Labor Congress passed its first resolution on the subject and in 1900 a fair-wage resolution was adopted by the House of Commons. Since then the unions by their own unaided efforts have secured a fairly general acceptance of the principle.

The minimum-wage idea, first adopted in Australia and Great Britain, seems to have come to Canada by way of the United States, and particularly through states on the Pacific Coast, whose legislation influenced the neighboring western provinces. The manufacturing provinces of the East followed the agricultural provinces of the West in the enactment of minimum wage laws, but in both the Ontario and Quebec laws the minimum wage boards have jurisdiction over wages alone while in the legislation of the other provinces their powers extend to hours and conditions of work. In 1923 New Brunswick appointed commissioners to investigate and report on mothers' allowances and a minimum wage for women. The report submitted in 1925 favored the enactment of a minimum wage law but as yet the legislature has taken no action.

The Trades and Labor Congress indicated its position with regard to a legal minimum wage as early as 1899, when a resolution demanding federal legislation for a minimum wage and a maximum work-day was adopted.[1]

The report of the Industrial Relations Commission of 1919 favored minimum wage legislation for unskilled laborers. After stating that the absence of minimum wage legislation, particularly for women and girls, was mentioned by witnesses "as a serious cause of dissatisfaction in some provinces", the Commissioners give their view, "We be-

[1] *Trades and Labor Congress*, 1899, p. 18.

lieve that such a law should be enacted in all the provinces and should cover not only women and girls but unskilled labourers as well." [1]

In 1925 British Columbia passed a Male Minimum Wage Act, the first legislation of the kind in the Dominion.

The first Canadian minimum wage law, enacted in Alberta in 1917, applied to workers of either sex within the scope of the Factories Act. It was strongly opposed by the manufacturers. When the measure was being discussed in the Alberta legislature the Canadian Manufacturers' Association expressed its view in a telegram to one of its members in Alberta. This message, which was forwarded later to the premier of Alberta, reads in part:

Principle of arbitrary minimum wage rests upon economic fallacy. Like any commodity offered for sale, price of labor will always be regulated by conditions of supply and demand. When Alberta minimum is lower than market price of labor in adjoining provinces the law is unnecessary and inoperative; when higher there will be influx of outsiders in numbers too great to be absorbed. Result is mass of unemployment with all attendant evils of destitution and vice. A province which always pays its labor at prices higher than adjoining provinces pay cannot help but impoverish itself. This type of legislation adversely affects interests of the very people it is designed to help. Minimum wage levels down; competitive wage levels up. Minimum wage encourages laziness; competitive wage encourages industry. Minimum wage stifles ambition by pulling energetic worker down to same class as less competent fellow; competitive wage stimulates ambition by recognition of merit. Minimum wage tends to restrict employment to young and robust who are physically able to give full value; competitive wage enables older and less hardy workers to share in opportunity of earning livelihood. Labor interests and legislators

[1] *Royal Commission on Industrial Relations, op. cit.*, p. 10.

alike would be making great mistake in endeavouring to establish arbitrary minimum which pays no heed to merits of individual case but confers rewards on incompetent who have not deserved them and denies rewards to competent who have really earned them.

Although the proposal became law, protests were continued and the Alberta legislation was amended in 1919, 1920 and 1921. Reporting on the passage of the Manitoba minimum wage law for women in 1918 the committee of the Canadian Manufacturers' Association concerned in the matter said, " the measure was adopted in a modified though still objectionable form." [1] But in a memorandum presented in 1920 by a prominent member of the Canadian Manufacturers' Association in Alberta on behalf of the manufacturers of the province to the committee appointed by the provincial government to enquire into the working of the Factories Act it was stated that " the best legislative practice is embodied in the Manitoba Minimum Wage Act. . . . All the orders made in Manitoba have been concurred in unanimously by both employers and workers and the act has given general satisfaction." [2] The change of attitude probably arose out of the National Industrial Conference held at Ottawa in September, 1919, at which representatives of employers, employees and the public unanimously agreed upon the desirability of minimum wage laws for women and children.[3] It would appear that the manufacturers accepted the Manitoba law as a desirable compromise and directed their efforts towards substituting it for the more inclusive Alberta legislation — an objective which was attained in 1922.

[1] *Industrial Canada*, July, 1918, p. 207.

[2] *Ibid.*, vol. xxi, p. 84.

[3] *Labour Gazette*, vol. xix, p. 1178.

FAIR WAGES ON GOVERNMENT CONTRACTS

*Canada*

In 1890 the Trades and Labor Congress resolved:

That whenever tenders are called for by either federal or provincial governments, or by any municipal council for the building of any public work or the performance of any public service, and where, in the building of such work or the performance of such service workmen will be employed belonging to a trade or calling in which there is a usual and commonly recognized scale of wages, the specifications shall contain a clause that the successful tenderer shall pay the rate of wages prevailing in such trade or calling in the municipality in which the work is to be performed, or forfeit his contract.[1]

The resolution was passed again in 1892,[2] and a committee of the Congress urged the matter upon the Minister of Public Works.[3] The Congress then went on record as favoring the local union rate of wages for all government contracts.[4] Although the request was not granted by the government the union view made progress, and in 1898 the Congress expressed thanks to the Postmaster General and the Minister of Militia "for their commendable action in having placed on all contracts in their departments, a clause providing for the payment of the union rate of wages."[5]

In March, 1900, a fair-wage resolution was passed in the House of Commons and J. D. O'Donoghue was appointed fair-wage officer in the Department of Labor. The resolution was as follows:

[1] *Trades and Labor Congress*, 1890, p. 27.
[2] *Ibid.*, 1892, p. 25.
[3] *Ibid.*, 1892, p. 9.
[4] *Ibid.*, 1893, p. 12; 1894, p. 12; 1895, p. 27.
[5] *Ibid.*, 1898, p. 9.

That it be resolved, that all Government contracts should contain such conditions as will prevent abuses, which may arise from the subletting of such contracts, and that every effort should be made to secure the payment of such wages as are generally accepted as current in each trade for competent workmen in the district where the work is carried out, and that this House cordially concurs in such policy, and deems it the duty of the Government to take immediate steps to give effect thereto.

It is hereby declared that the work to which the foregoing policy shall apply includes not only work undertaken by the Government itself, but also all work aided by grant of Dominion public funds.

The fair wage clause was first incorporated in a government contract on May 26, 1900, and in the fiscal year 1900-1901 sixty contracts under the Public Works Department contained schedules of the wages required to be paid. The contracts issued under this provision have been listed regularly in the *Labour Gazette,* the official publication of the Department of Labor.

In 1903 it was provided in the Railway Act (c. 58, s. 205) that

In every case in which the Parliament of Canada votes financial aid by way of subsidy or guarantee towards the cost of railway construction, all mechanics, labourers or other persons who perform labour in such construction shall be paid such wages as are generally accepted as current for competent workmen in the district in which the work is being performed; and if there is no current rate in such district, then a fair and reasonable rate; and in the event of a dispute arising as to what is the current or a fair and reasonable rate, it shall be determined by the Minister, whose decision shall be final.

The Railway Act of 1919 (c. 68) reenacted the above provision as Section 244 and it has not since been amended.

The unions were not altogether satisfied with the admin-

istration of the fair-wage resolution. In 1901 the general executive committee of the Trades and Labor Congress made the following recommendations, which were concurred in by the Congress:

> Every contract of every Department of the Government should contain a fair wages schedule and other conditions such as will secure the carrying out of the contract in a manner which will protect the interest of the wage-earners.
>
> The Department of Labor should have full authority to investigate every complaint which might arise as to the non-fulfillment of conditions relating to wages, etc., and the report of its officers, as approved by the Minister of that Department, should be carried into execution by the Department which had awarded the contract.
>
> Legislation should be enacted making the insertion of such clauses compulsory, and also the publication of them at the time at which the contract was awarded.[1]

The Congress by resolution and in conference with the government continued to press for a stricter enforcement of the fair-wage principle[2] and to draw attention to what the unions considered weaknesses in its administration, but in 1904 application of the resolution was further restricted by a ruling of the Minister of Labor who held that "the resolution applies to works under contract, but it does not apply to enterprises aided by bounty."[3] The fair-wage officer's report indicated however that the resolution had been applied to bonused industries, and he quoted from Hansard to show that it was so intended. In 1906 the fair-wage officers recommended amendments and an order-in-council was passed, August 30, 1907, which provided for the insertion

[1] *Trades and Labor Congress*, 1901, p. 78.

[2] *Ibid.*, 1902, pp. 23-26; 1903, pp. 12-13; 1904, p. 27; 1905, p. 63; 1906, p. 54; 1907, pp. 71, 73; 1908, pp. 86-87.

[3] *Ibid.*, 1904, p. 33.

of the following clauses in all government contracts within the scope of the resolution:

1. Contractors shall post in a conspicuous place on the public works under construction, the schedule of wages inserted in their contracts for the protection of the workmen employed.

2. Contractors shall keep a record of payments made to workmen in their employ; the books or documents containing such record shall be open for inspection by the Fair Wages Officers of the Government at any time it may be expedient to the Minister of Labour to have the same inspected.

Dissatisfaction with the administration of the resolution continued to find expression at almost every Trades and Labor Congress. It was charged that the fair-wage schedules were openly violated and that individual employees who claimed their privileges under the resolution were discriminated against.[1] There were suggestions that more fair-wage officers should be appointed in order to secure a stricter enforcement;[2] that a clause should be added giving the Minister power to deduct moneys due individual workmen;[3] and that the resolution should apply to undertakings assisted by government funds, including steamship companies subsidized by the government as well as to all government contracts and subcontracts.[4] The unionists also desired that the resolution should extend to work done by the day as well as contract work,[5] and they presented evidence to show that the rulings of the Department of Labor were not carried out by the department in charge of the work.[6]

[1] *Trades and Labor Congress*, 1909, p. 71.

[2] *Ibid.*, 1909, p. 71; 1910, p. 81; 1912, pp. 83-84; 1913, p. 125; 1914, pp. 97, 100; 1918, pp. 137, 149, 159.

[3] *Ibid.*, 1910, p. 81.

[4] *Ibid.*, 1911, p. 78; 1914, pp. 98, 100; 1915, pp. 13, 114.

[5] *Ibid.*, 1912, pp. 83-84; 1913, pp. 122, 125.

[6] *Ibid.*, 1914, p. 89.

New grounds of complaint as to the operation of the fair-wage resolution arose during the depression of 1914-15. With the general decline of the wages of unorganized workers it frequently happened that " the payment of such wages as are generally accepted as current in each trade for competent workmen in the district " meant the payment of lower wages than the union rate, as stated in industrial agreements. The union worker had either to refuse employment on government contracts or to accept such employment at wages below the nominal union rate and so force a downward revision in the union scale of wages. The Trades and Labor Congress desired that the Fair Wages Resolution should not become an instrument for the reduction of the union wage rate and in 1915 the Congress urged that the clause should be amended to provide for the payment of the established union rate of wages in the district. Complaint was also made that the Department of Railways and Canals by refusing to observe the fair-wage resolution as applying to day labor employed by the Department on various works was adversely affecting the wages of workers employed by private firms.[1]

With the coming of the war it was charged that the fair-wages resolution was not enforced on contracts for clothing, shoes, and other war supplies.[2] Effort was made to have fair-wage clauses inserted in contracts for war supplies released by the British Government to manufacturers in Canada [3] and the executive of the Trades and Labor Congress pressed for the appointment of a fair-wages board which should insert wage schedules in all contracts placed in Canada by both the Dominion and Imperial Governments and should see to their enforcement.[4] When this was denied, union

[1] *Ibid.*, 1915, pp. 68-69.

[2] *Ibid.*, 1915, pp. 53, 84; 1918, p. 114.

[3] *Ibid.*, 1915, p. 92; 1916, pp. 14-17.

[4] *Ibid.*, 1916, p. 24.

deputations urged that penalties should be imposed on contractors for violation of the fair-wages resolution,[1] and in 1920 it was requested that fair-wage clauses should be inserted in all contracts for the manufacture of supplies and equipment for the several departments of the government.[2]

The Liberal Government of Hon. W. L. Mackenzie King, which came to office early in 1922, soon gave evidence of interest in the fair-wages principle, the first resolution having been adopted early in the Liberal regime of Sir Wilfrid Laurier, and on June 7, 1922, an order-in-council (P. C. 1206) looking to the better observance of the fair-wages policy of the government was adopted. This measure, which practically granted the union wage rate as the basis for the fair wage and much else of what was desired by the official labor movement, established conditions for public works, whether constructed under contract for the government or assisted by government funds, and for the manufacture of government supplies. In the case of public works the department concerned was required to advise the Department of Labor as to the nature of the proposed contract and the classes of labor likely to be employed, and it was directed:

> The Department of Labour shall thereupon prepare and furnish to the Department concerned schedules setting forth the rates of wages generally accepted as current for competent workmen of the various classes required in the district in which the work is to be performed or if there be no current rates in the district, then fair and reasonable rates, the same to be recognized as the minimum rates of wages payable to the various classes of workmen employed; and also setting forth the hours of labour fixed by the custom of the trade in the district, or if there be no such custom then fair and reasonable hours, the

[1] *Trades and Labor Congress*, 1918, p. 98; 1919, p. 60; 1920, p. 16.

[2] *Ibid.*, 1920, p. 189.

same to be recognized as the maximum hours during which the several classes of workmen employed shall be required to work, except for the protection of life or property or on due cause shown to the satisfaction of the Minister of Labour. By the term "current wages" and the term "hours of labour fixed by the custom of the trade" in the foregoing are meant respectively the standard rates of wages and hours of labour either recognized by signed agreements between employers and workmen in the district from which the labour required is necessarily drawn or actually prevailing, although not necessarily recognized by signed agreements.

A larger measure of control was vested in the Department of Labor by the insertion of a clause as follows:

In the event of any dispute arising as to the wages or hours to be observed under the Fair Wage Schedule or as to the wages and hours of any class of labour not covered by the Fair Wage Schedule, the same shall be determined by the Minister of Labour, whose decision shall be final; payment may also be withheld of any moneys which would otherwise be payable to the contractor until the Minister of Labour's decision has been complied with.

In any case where the Department of Labor could not furnish schedules of wages and hours that Department could recommend the insertion of the following general clause:

All mechanics, labourers, or other persons who perform labour in the construction of the work hereby contracted for, shall be paid such wages as are generally accepted as current from time to time during the continuance of the contract for competent workmen in the district in which the work is being performed, and if there be no current rate is such district, then a fair and reasonable rate, and shall work such hours as those fixed by the custom of the trade in the district where the work is carried on, or if there be no custom of the trade as respects

hours in the district, then fair and reasonable hours, except for the protection of life and property, or on due cause shown to the satisfaction of the Minister of Labour. In the event of a dispute arising as to what is the current or a fair and reasonable rate of wages or what are the current hours fixed by the custom of the trade or fair and reasonable hours, it shall be determined by the Minister of Labour, whose decision shall be final. Payment may also be withheld of any moneys which would otherwise be payable to the contractor until the Minister of Labour's decision has been complied with. By the term "current wages" and the term "hours of labour fixed by the custom of the trade" in the foregoing are meant respectively the standard rates of wages and hours of labour either recognized by signed agreements between employers and workmen in the district from which the labour required is necessarily drawn or rates actually prevailing, although not necessarily recognized by signed agreements.

The order-in-council provided that clerks of works or other inspecting officers should do all in their power to ensure observance of the fair-wage conditions of the contract. The contractor was required to post the fair-wage clause or schedule in a conspicuous place on the premises and also to keep for the information of the fair-wage officers a record of the names, trades, and addresses of all workmen in his employ, the time worked by such workmen and the wages paid them. A further provision stated that the contractor should not be entitled to payment for any work performed until he had filed with the minister of the department concerned a statement attested by statutory declaration showing:

(1) the rates of wages and hours of labour of the various classes of workmen employed in the execution of the contract; (2) whether any wages in respect of the said work and labour remain in arrears; (3) that all the labour conditions of the contract have been duly complied with.

The minister of the department concerned was empowered in default of payment by the contractor to pay claims for wages out of the moneys payable under the contract. Subletting of the contract without permission from the minister was forbidden and contractors were held responsible for the adherence of the sub-contractors to all the conditions. Only residents of Canada could be employed on any such work unless in the opinion of the minister Canadian labor could not be secured. Contracts for the manufacture of government supplies were to contain the general fair-wage clause given above and contractors were required to post the clause, to keep records of employees and their wages and hours and to permit inspection of the premises as in the case of public works contracts. The same regulations also obtained as to subletting, employment of Canadian labor, submission by the contractor of a statement showing compliance with the labor conditions of the contract in support of his claim for payment and the power of the minister to pay wages in default of payment by the contractor.

This order in council was amended on April 9, 1924 "to make its purpose clearer and more definite." The amendment enabled the Minister of Labor in connection with contracts for construction work to determine fair and reasonable wages and hours and to change or revoke his decision at any time, provided that no decision should be retroactive for more than three months. Where it seemed to the minister expedient he was authorized to decide the rates of wages for overtime and the classification of any work for the purposes of wages and hours. Contractors were required to give immediate effect to any decision of the minister, and upon their failure to pay the wages directed, the minister could authorize and direct the minister of the department which let the contract to pay the required wages and to deduct the same from any moneys due the contractor from the government.

### *British Columbia*

The legislature of British Columbia followed the example of the Dominion House by adopting in 1900 a fair-wage resolution which provided "that upon all provincial public works the current wages of the community where any such work was being prosecuted would be paid to all workmen engaged thereon." [1] The fair-wage provision was inserted in the Municipal Act of the province by an amendment of 1900 (c. 23, s. 34) as follows:

> All municipal contracts shall contain provisions whereby the workmen, mechanics, artizans, and labourers employed on municipal works shall be entitled to such wages and remuneration as are generally accepted as current in each trade for competent workmen in the municipalities, and whereby all contractors and sub-contractors shall be bound to pay such wages.

An amendment of 1908 (c. 50) to the Railway Assessment Act of 1907 (c. 42) authorized the Lieutenant-Governor in Council to grant any railway exemption from assessment and taxation for a period of ten years from its completion on condition that it paid its employees the wages current for white workers in similar occupations in the district.[2]

A fair-wage clause was incorporated in the provincial railway act in 1911 (c. 44), and in 1916 the following fair-wage clause was inserted in the British Columbia Shipping Act (c. 57, s. 44b), which made provision for financial aid to the shipbuilding industry and constituted a shipping credit commission for the administration of the law:

> Such rate of wages as the Commission may decide to be a

[1] *Trades and Labor Congress*, 1900, p. 14.

[2] This provision was included in the Taxation Act in R. S. 1911, c. 222, s. 196 and in R. S. 1924, c. 254, s. 113b.

fair rate shall obtain in respect of all work done in and about the construction of the ship and in and abqut the manning and operation of the ship.

This legislation, however, was never brought into operation and was repealed in 1922 (c. 71).

The Better Housing Act of 1919 (c. 8) contained the following section:

> In any agreement or contract entered into under the provisions of this Act a fair-wage clause shall be inserted providing that the prevailing wage in the district where construction takes place shall be paid all workers employed.

During the war the British Columbia Federation of Labor tried without success to secure the acceptance of trade-union rates of wages, hours and conditions as the standard for all work carried out under contract for the government.[1]

### *Ontario*

In 1892 a delegation representing the Trades and Labor Congress asked the Minister of Public Works in Ontario to provide for "the payment of the current rate of wages on government works" and the Minister was of the opinion that "the Government ought not to be asked to interfere as between employers and employees in matters of wages."[2] However the Ontario Legislature adopted a fair-wage resolution in 1900.[3]

The fair-wage principle was also recognized in railroad legislation by the Ontario Government in 1900 (c. 28) in "An act respecting certain railways," which provided that subsidies to the railways in question should be granted on certain conditions, one being that

[1] *Trades and Labor Congress*, 1917, p. 71; 1918, p. 60.

[2] *Ibid.*, 1892, p. 6.

[3] *Labour Gazette*, vol. xxiii, p. 124.

the workmen, labourers, or servants employed in or about the construction and operation of the railway in aid of which such subsidy is granted shall be paid such rate of wages as may be currently payable to workmen, labourers and servants engaged in similar occupations in the district in which such railway is constructed and operated, and upon breach of such condition by the railway company there may be deducted and retained from any monies payable in respect of such unearned subsidy or hereafter granted subsidy such amount as the Lieutenant-Governor-in-Council may think proper and in case the subsidy shall have been paid over before such breach, such part thereof as may be determined by Order in Council may be recovered back from such railway company to which the same was granted, with full costs of action at the suit of the Attorney General in any court of competent jurisdiction.

The Ontario Railway Act of 1906 (c. 30) contained a similar clause, which extended this fair-wage provision to all the railways within the scope of the act and the consolidating act of 1913 (c. 36) contained both these clauses.

In 1908 the Trades and Labor Congress again urged upon the government the adoption of a fair-wage policy,[1] and some informal recognition of this request was granted, for in the next year the Congress emphasized the necessity of enforcing the fair-wage clauses in provincial contracts.[2] Requests of this kind continued,[3] and in 1913 the Congress asked that a provincial fair-wage officer should be appointed.[4] The provincial executive committee of the Congress reported in 1915 that the Minister of Public Works had decided to include a fair-wage clause in the specification governing contracts,[5] but at the next two annual meetings complaint

[1] *Trades and Labor Congress*, 1908, p. 23.

[2] *Ibid.*, 1909, p. 20.

[3] *Ibid.*, 1910, p. 24; 1912, p. 35.

[4] *Ibid.*, 1913, pp. 39, 151; 1914, p. 23.

[5] *Ibid.*, 1915, p. 26.

was made that "the present fair-wage clause inserted in the contracts of the Ontario provincial government is of such an indefinite and ineffective nature that contractors have refused to recognize it." [1] Pressure for a more satisfactory provision for the payment of a fair wage has continued without any substantial results.[2]

*Saskatchewan*

The Saskatchewan Government inserted in the Railway Act of the province in 1906 (c. 30, s. 150) a fair-wage clause similar to that included in the Dominion Railway Act in 1903. It was provided further in 1912 (c. 42, s. 7), as requested by the provincial executive committee of the Trades and Labor Congress,[3] that when the province had contributed to the cost of constructing a railway the fair-wage principle should apply in the operation as well as in the construction of the road.

As early as 1907 the union officials of the province urged the adoption of a fair-wage policy [4] for public works, but the government did not yield until 1916 (c. 9), when "An act respecting public works" made the following provision for fair wages on the public works of the province:

38. In every case where public works are carried on, whether by contract or by order or commission, or under the direction of the officers of the department, all mechanics, labourers, or other persons who perform labour on such works shall be paid such wages as are generally accepted as current for competent workmen in the district in which the work is being performed; and if there be no current rate in such district then a fair and reasonable rate; and in the event of a dispute arising as to what

[1] *Ibid.*, 1916, p. 138; 1917, p. 117.

[2] *Ibid.*, 1918, p. 38; 1920, p. 101; 1922, p. 483.

[3] *Ibid.*, 1912, p. 20.

[4] *Ibid.*, 1907, p. 23; 1908, p. 19; 1909, p. 18.

is the current or a fair and reasonable rate it shall be determined by the fair wage officer of the government, whose decision shall be final.

The same clause appeared in the Highways Act (1916, c. 8, s. 15, replaced by 1917, c. 7, s. 17), which established a Board of Highway Commissioners, and later a Department of Highways, to control the construction and maintenance of public highways.

### *Manitoba*

The Province of Manitoba has given wider recognition to the fair-wage principle than any other government in Canada. Long before a fair-wage policy was adopted by the provincial government the council of the city of Winnipeg passed by-laws requiring the insertion of a clause in all city contracts binding the contractors to pay those employed on the work not less than a stated wage. The legality of this provision, which was contested by a prominent contractor of the city, was upheld in 1898 in Kelly *v.* City of Winnipeg.

In 1907 the provincial government adopted the fair-wage resolution of the Dominion government with the addition of two clauses which empowered the fair-wage officer to examine the time-sheets and books of the contractor and required that the schedule posted on the work should be printed in the languages of the workmen.[1] In 1914 the government made a pre-election promise that the clause should read, "The wages to be paid and the hours to be worked under this schedule shall be the union wages and hours of labor officially recognized by the various unions of the trades affected."[2] But the promise was not fulfilled and the unions

[1] *Trades and Labor Congress,* 1907, p. 21.

[2] *Ibid.*, 1914, p. 35; 1915, p. 25.

claimed some credit for the government's defeat in the ensuing election.

In 1916 (c. 121) the new provincial legislature passed the Fair Wage Act which established a Fair Wage Board of not less than three members, one representing employers, one representing employees and an official of the Department of Public Works, to make recommendations to the Minister of Public Works as to the minimum rates of wages per hour and the maximum number of hours per day for employees engaged on public works. The Board was to be governed by the principle that the rate of wages and hours should be not less favorable to the employees affected than the wages and hours commonly recognized by employers and trade societies as prevailing in the district during the then preceding twelve months. The law stated that all future contracts involving the employment of workpeople should contain provisions setting forth the terms of any order of the minister adopting the recommendations of the Board, and also a stipulation that no workman in the employ of the contractor should be employed on any other terms. For the necessary enquiries in connection with the work of the Board, the Bureau of Labor was empowered to examine the books and payrolls of employers and was directed to transmit to the Board all procurable data and statistics relating to wages and hours and conditions of labor. The Board was established in 1917 and schedules of wages and hours approved by the Minister of Public Works have been adopted annually since that time. There has been some objection on the part of employers to the work of the Board and in 1922 the Manitoba Employers' Association was unsuccessful in an effort to have the government abolish the Board and to provide instead that its work should be carried on by the Joint Council of Industry.[1]

[1] *Industrial Canada, February*, 1922, p. 72.

### *Nova Scotia*

The only fair-wage legislation of Nova Scotia is a section inserted in the Mines Act in 1906 (c. 16, s. 56c). This act authorizes the commissioner of public works and mines to operate mines in the interests of the Crown in certain circumstances, and it is provided in that event that:

> All persons so employed by, or required to assist the commissioner, shall be paid such wages or remuneration as shall be fixed by the commissioner, not, however, to be less than the usual and customary wages paid at such mine for the respective classes of services performed.

The provision was continued in the consolidating acts of 1911 (c. 10, s. 59) and of 1921 (c. 20, s. 58(2) ).

### *Alberta*

The Alberta Legislature embodied in the Railway Act of 1907 (c. 8, s. 153) the fair-wage clause inserted in the Saskatchewan Railway Act the previous year, but Alberta did not follow the neighboring province in applying the fair-wage principle to the operation of railways.

The Public Highways Act of Alberta (1918, c. 14, s. 13) made provision for payment of fair wages on work in connection with highways, but this policy has not been extended to public works in general, despite the efforts of the trade unions.[1] A new Public Highways Act was passed in 1922 (c. 79) but no fair-wage clause was included.

### *New Brunswick*

In 1913 (c. 20) the New Brunswick Legislature at the request of the provincial executive committee of the Trades and Labor Congress[2] enacted a statute providing for the

[1] *Trades and Labor Congress*, 1911, p. 22; 1912, p. 29; 1915, p. 44; 1917, p. 186; 1918, p. 57; 1920, p. 124.

[2] *Ibid.*, 1913, p. 35.

insertion of a fair-wage schedule in every contract of the public works department. The act reads as follows:

> Upon and after the passage of this Act, there shall be attached to and become a part of every contract of the Public Works Department of the Province of New Brunswick, whereby labor is to be done and performed a fair wage schedule.
>
> Such schedule shall contain the wages that are fair, usual and customary at the time of the letting of the contract, and in the locality in which the contract is to be performed.

The law remains unchanged although the unions at various times have asked for amendments.[1]

### *Quebec*

Delegations of trade unionists at various times have urged upon the Quebec Government the insertion of a fair-wage clause in all contracts let by the provincial administration, and while the request has been complied with in individual cases and a fair-wage officer was appointed in 1915, there seems to have been no consistent fair-wage policy.

### *Yukon Territory*

An ordinance of the Yukon Territory passed in 1917 (c. 6), which established an eight-hour day for employees on public works undertaken by the government by day labor contained a fair-wage provision. The ordinance required that the wages to be paid all foremen, workmen, or laborers employed by day labor on any of the work contemplated should be the current *per diem* wages paid by the government for the particular kind of work in the locality.

[1] *Ibid.*, 1915, p. 32; 1916, p. 76; 1920, p. 127.

[2] *Ibid.*, 1909, p. 22.

[3] *Ibid.*, 1916, p. 64.

## THE MINIMUM WAGE

### *Alberta*

The Factories Act of Alberta passed in 1917 (c. 20), which applied to shops, offices and office buildings in cities and towns of over 5,000 population, and to all factories within the province, contained the following clause: "No person shall be employed by any employer in any factory, shop, office or office building at a wage less than $1.50 per shift except in the case of apprentices who may be paid a wage of not less than $1. per shift." By an amendment of 1919 (c. 4, s. 29) the Lieutenant-Governor in Council was empowered to appoint in each of the four cities having a population exceeding 5,000, two persons, representing employers and employees respectively, to act with a third person appointed by the Attorney-General as an advisory committee to make recommendations respecting the hours any person might be required to work in a factory, shop, office or office building or respecting the minimum wage at which any female person might be employed in industries within the scope of the Factories Act. Accordingly application of the minimum wage was limited to women workers at the outset. The amendment provided that the chief factory inspector might issue regulations putting into effect the recommendations of these local advisory boards but no regulation might allow a lower minimum wage or a greater number of hours per week than was allowed by the act.

This decentralizing trend in the legislation terminated abruptly the next year when by another amendment (1920, c. 40) the section which made provision for local advisory boards was repealed and a new section was substituted, empowering the Lieutenant-Governor in Council to appoint a committee of five, representing employers and employees with a fifth nominated by the Attorney-General. It was the

duty of this advisory committee to determine the minimum wage for all persons under eighteen years of age and all female persons employed in factories, shops, offices or office buildings under the act. The committee was directed to determine the number of hours per day and week during which any person should be required to work in any place under the act and also what proportion of the employees might be apprentices.

The committee held hearings and made recommendations, which were disregarded, and an amendment of 1921 (c. 41) deprived them of the power to "determine" the minimum wage. Instead the committee was authorized to recommend the division of employees within the scope of the act into different classes, having regard to locality and occupation, and "to investigate and recommend" the amount to be paid as a minimum wage to women, but not to persons under eighteen. The committee's authority to determine the number or proportion of apprentices was also reduced to powers of recommendation.

In 1921 it was reported to the Canadian Manufacturers' Association that

> it was arranged with the Alberta government that it should introduce a minimum wage bill for females at this session and take no action upon a report made by the advisory committee appointed providing for a minimum wage of $13.50 per week. The Attorney-General introduced such a bill but withdrew it upon labor members opposing same.[1]

The government was defeated in the provincial election of 1921 and the new Farmer-Labor Government passed the Minimum Wage Act in 1922 (c. 81), which repealed the Factories Act provision (1920, c. 40, s. 26a) for a central advisory committee and stated that the minimum wage

[1] *Industrial Canada*, July, 1921, p. 146.

clause of the Factories Act and any other statutory provision on the subject "shall not be applicable to any employee in respect of whom a minimum wage has been fixed by this Act." This new law authorized the appointment of a Minimum Wage Board of three members representing employers, the employed and the province at large, one of the members named by the Lieutenant-Governor in Council to be chairman. The Board was empowered to enquire into the conditions and wage scale in any class of employment except domestic service in private homes, and to direct conferences of an equal number of representatives of employers and employed, with the chairman of the Board sitting as chairman of the conference, for the purpose of reaching an agreement as to the minimum wage. The Board could establish a minimum wage without calling a conference and was also empowered, with the approval of the Lieutenant-Governor in Council, to fix periods of employment and shifts for different classes of employees, determining also the time allowance for meals. It was stated that any such decisions of the Board should supersede the provisions of the Factories Act with regard to shifts. The law was limited in its application to Calgary, Edmonton, Lethbridge, Medicine Hat, Red Deer, Wetaskiwin, Blairmore, Camrose, Cardston, Coleman, Drumheller and Redcliff.

An amendment of 1924 (c. 3, s. 13) gave the Board power to increase the working hours temporarily, to determine the rate of pay for such overtime and to increase temporarily the number of apprentices. The amendment also authorized the Minister of Public Works to appoint inspectors to see that orders under the Minimum Wage Act were carried out.

In an appeal taken by the Hudson's Bay Company from an opinion given in a case involving an order of the Board the Supreme Court of the province declared invalid all orders

of the Board affecting wages. The construction of the act was criticized during the court action and it was redrawn therefore and reenacted in 1925 (c. 23). The major changes from the old act are summarized by the *Labour Gazette*[1] as follows:

(1) It is made clear that the Board can determine with greater freedom as to what class of employees or class of employment the minimum wages are to affect. Thus it is made clear that a process such as box-folding, which might be common to many trades, can be treated as a separate employment; (2) It is made clear that if an order does not state to what place it is applicable, it shall be taken to be applicable to all the places mentioned in the schedule to the Act. These places are the same as those mentioned in the earlier act; namely, Calgary, Edmonton, Lethbridge, Medicine Hat, Red Deer, Wetaskiwin, Blairmore, Camrose, Cardston, Coleman, Drumheller and Redcliff; (3) Specific power is given to the Board to authorize deductions when hours less in number than the ordinary shift are worked, and in cases where meals or lodgings are furnished in lieu of wages; (4) Specific powers are given to the Board as to fixing learning periods, and as to instruction of learners; (5) Provision is made for individual permits for handicapped employees; (6) Signature of orders by the chairman and the secretary is specially provided for; (7) Publication in the *Alberta Gazette* is to be sufficient notice of the existence and of the terms of the order; (8) Provision is made for the temporary increase of working hours on the occasion of a breakdown of machinery, etc.; (9) Learners in any industry are not to be called upon to pay premiums.

*Manitoba*

The first minimum wage law of Canada, apart from the minimum wage clause in the Alberta Factories Act of the previous year, was the Minimum Wage Act of Manitoba, passed in 1918 (c. 38). The Manitoba executive committee

[1] Vol. xxv, p. 566.

of the Trades and Labor Congress, which presented a draft bill with a minimum wage of $10 per week, reported lively opposition.[1] This act gave authority for the appointment of a Minimum Wage Board of five members, two representatives of employers, one to be a woman; two representatives of employees, one to be a woman; and a chairman, a disinterested person not directly or indirectly connected with employers or employees. The secretary of the Bureau of Labor was appointed secretary of the Board. The Board was given ample powers of investigation and was authorized to make orders as to minimum wages, hours of employment and conditions of labor for female employees in mail-order houses, shops and factories in any city of the province. The Board was authorized, moreover, to make orders extending the provisions of the act to portions of the province not included in cities. It was provided that the orders of the Board should become effective one month after publication in the *Manitoba Gazette*. By an amendment of 1919 (c. 54) the provisions of the act were extended to female workers in offices (but not a branch of any municipal or other government) and places of amusement. The Manitoba Minimum Wage Board has issued orders covering practically all the women engaged in industry in the province.

### *British Columbia*

The Minimum Wage Act of British Columbia was enacted in 1918 (c. 56). Under this legislation a Minimum Wage Board of three members was established with the Deputy Minister of Labor as chairman, the other two members to be appointed by the Lieutenant-Governor in Council and one member to be a woman. The act provided that if after investigation the wages paid to women workers in any industry should be found inadequate, the Board might

[1] *Trades and Labor Congress*, 1918, p. 53.

call a conference of an equal number of representatives of employers and employees in the industry in question, together with one or more disinterested persons, not exceeding in number the representatives of either of the other parties, a member of the Board to be the chairman of the conference. Such a conference should furnish an estimate of the minimum wage proper in the industry and adequate to supply the necessary cost of living. The Board could approve or disapprove any or all of the recommendations of the conference and could recommend the subject or the recommendations disapproved of to the same or a new conference. After approving the recommendations of a conference the Board was required to issue an obligatory order specifying the minimum wage for women employees in the industry in question, effective thirty days after publication in the *British Columbia Gazette,* after which it should be unlawful for any employer in the industry to employ workers at less than the minimum wage specified in the order. Special licenses might be issued to physically defective women or to apprentices, authorizing employment at a wage less than the minimum. The number of employees holding such special licenses in any establishment was not to exceed one-tenth of the whole number of employees. The act did not apply to farm laborers, fruit-pickers or domestic servants or their employers.

In 1919 (c. 61) the act was amended to include some of the powers extended to the Board in the Manitoba law. The amendment empowered the Board to enquire into hours and conditions of labor and employment in industries employing female workers and to fix maximum hours and standard conditions of employment as well as minimum wage rates. The amendment provided that special licenses to physically defective women and to apprentices might be granted to one-seventh of the whole number of employees in the establishment instead of one-tenth as formerly and that in a plant

where less than seven were employed there might be one apprentice holding a special license. Apparently this change in the law was made in response to the representations of the Canadian Manufacturers' Association. At the convention of the Association in 1920 it was stated:

> Certain findings made under the minimum wage legislation enacted in this province in 1918 were found, in operation, to work greatly to the disadvantage of a considerable number of the members and it is gratifying to be able to report that largely through the persistent efforts of this division important modifications have been made to the regulations governing the employment of women in the general manufacturing industry of the province; notably in the matter of apprentices.[1]

Provision was made by an amendment in 1921 (c. 40) for the issuing of special licenses to women over eighteen desirous of learning special occupations or trades in which apprentices were not usually employed, at a rate for inexperienced employees lower than the minimum wage. The aggregate number of such employees however, of employees under eighteen and of those holding special licenses as physically handicapped or as apprentices could not exceed thirty-five per cent of the total number of employees in any establishment. It was also stipulated that a copy of any order of the Board, as set out in the *British Columbia Gazette,* should be conclusive evidence that the order was duly and regularly made. Evidently this provision, which was retrospective in application, arose out of a case in which an order of the Board was declared inoperative owing to insufficient notice being given of its coming into effect.[2]

The Board has issued orders fixing minimum wages for female employees in mercantile and manufacturing occupa-

[1] *Industrial Canada*, 1920, p. 183.

[2] Rex *v.* Allbutt, *Labour Gazette*, vol. xxi, p. 122.

tions, laundries, public housekeeping, clerical work, personal service, telephone and telegraph work and the fishing, fruit and vegetable industries (except fruit-pickers and farm laborers). In each industry also minimum rates were fixed for adult learners and for minors but the number of each of these classes was limited to a fixed percentage of the total number of workers.

Provision for a minimum wage for coal miners in the province was made by an amendment to the Coal Mines Regulation Act in 1919 (c. 58) at the request of the British Columbia Federation of Labor.[1] This amendment established the Coal-miners Minimum Wage Board, consisting of the chief inspector of mines as chairman and one member representing the mine owners and one the coal miners. The Board was authorized to define any portion of the province as a minimum wage district, to fix the minimum wage for coal miners employed therein, and to impose conditions and exceptions to which the application of the minimum wage in any district should be subject. Orders of the Board required the approval of the responsible Minister. Mines inspectors were given access to books and records of mine owners and were authorized in cases of underpayment to recover from the employer for the benefit of the coal miner concerned the difference between the wage actually paid and the amount of the minimum wage fixed by the Board, together with costs and solicitor's fees. The act stated that the section establishing the Coal-miners Minimum Wage Board should remain in force for three years from July 1, 1920, but it was never promulgated.

The Male Minimum Wage Act of British Columbia, passed 1925 (c. 32), provided for the establishment of minimum-wage rates to be fixed by the Board of Adjustment under the Hours of Work Act (1923, c. 22). The act ap-

[1] *Trades and Labor Congress*, 1917, p. 70; 1918, p. 60.

plied to all occupations other than those of farm-laborers, fruit-pickers, fruit-packers, fruit and vegetable canners and domestic servants. The Board was given the usual powers of investigation and could authorize the payment of wages less than the minimum to handicapped, part-time and apprentice employees. Employers were required to keep a record of the wages paid to and the hours worked by each of his employees together with their names, ages and addresses.

### *Saskatchewan*

In 1915 the Saskatchewan executive committee of the Trades and Labor Congress asked the provincial government for legislation fixing a minimum wage of $8 per week for female workers [1] and in 1918 a minimum weekly wage of $12 for trained women workers and $8 for female apprentices was requested.[2] The Minimum Wage Act of Saskatchewan was passed in the session of 1918-19 (c. 84) to become effective May 1, 1919. This law followed in the main the British Columbia law although a preliminary conference of employers and employees before issuing a minimum wage order in any industry was not required. It applied to female workers employed in shops and factories in any city of the province and the Board was empowered to extend the provisions of the law to localities other than cities. The act provided for a Minimum Wage Board of five persons, of whom two must be women, which was authorized to establish standards of minimum wages and hours of employment. Special licenses to defective employees and to learners or apprentices might be issued by the Bureau of Labor under the Board's direction and any employee paid less than the minimum wage might sue for the difference.

[1] *Trades and Labor Congress*, 1915, p. 22.

[2] *Ibid.*, 1918, p. 55.

By amending legislation of 1919-20 (c. 78) the powers of the Board to establish standards of minimum wages and hours of employment were extended. The Board was authorized, subject to the provisions of The Factories Act, to establish standards of sanitary conditions and requirements and to determine what number or proportion of the employees in a shop or factory might be apprentices. The employers were required also to keep records of the work hours of employees as well as the names, addresses and actual earnings required by the original act. As requested by organized labor in the province,[1] the Board's jurisdiction was extended by this amendment to employees in hotels, restaurants and refreshment rooms. Orders relating to employees in shops and stores, laundries and factories, mail-order houses, hotels, restaurants and refreshment rooms have been issued.

In establishing sanitary standards, the Board was required, in 1921-22 (c. 72), to observe the provisions of the Public Health Act.

### *Quebec*

The Women's Minimum Wage Act, passed by the Quebec Legislature in 1919 (c. 11), authorized the appointment of a commission of three members "one of whom shall be the Deputy Minister of Labour or any other person designated by the Minister and who shall be the chairman thereof." The act required that one member of the Board should be a woman. The commission's jurisdiction was extended only to industrial establishments as defined by the factories act (R. S. Q. 1909, Articles 3829 and 3830) and the protection of the act was not given to women employees in stores, hotels, restaurants and offices.

As in British Columbia, the commission, if it considered

[1] *Ibid.*, 1920, p. 122.

the wages inadequate in any establishment, could convene a conference of representatives of employers and employees and of a number of disinterested persons, and the conference by a majority vote could decide upon the minimum wage to be paid the women employed in the industry in question. The commission could approve, reject or amend the decision of the conference or order the holding of a new conference. Special permits might be issued to apprentices or to women whose physical condition prohibited their doing the work of an ordinary employee, and the commission could also fix special scales of wages for girls under eighteen years. In contrast with the laws of some provinces, the commission was not empowered to make orders determining what proportion of the employees in any establishment could be apprentices.

No action was taken under this legislation for six years, the Board not being appointed until 1925.

### *Nova Scotia*

Minimum wage legislation was introduced in the Nova Scotia legislature in 1918, but as reported by the Canadian Manufacturers' Association "prompt representations were made on the part of the Association and the bill was afterwards withdrawn." [1] In 1919 the Nova Scotia Federation of Labor asked that a minimum wage law should be placed on the statute books,[2] and the same year the legislature authorized (c. 26) the appointment of a commission to enquire into the hours of labor, wages and working conditions of women in industrial occupations.

In 1920 (c. 11), in accordance with the recommendation of the commission, the Nova Scotia legislature enacted a law which provided for the establishment of minimum wages

[1] *Industrial Canada*, July, 1918, p. 207.

[2] *Trades and Labor Congress*, 1919, p. 82.

for women and for a Minimum Wage Board of five persons, two of whom should be women, for the administration of the measure. The Board was empowered

> to declare what wages are adequate to furnish the necessary cost of living to employees and, where not inconsistent with the provisions of the Nova Scotia Factories Act, . . . what are reasonable hours and proper sanitary conditions and requirements for those employed in factories or in shops or in any particular factory or in any particular shop or in any class of factories or in any class of shops;

and, secondly, to "establish standards of minimum wages and of hours of employment for such employees." The Board was given power to make investigations and to summon witnesses, and employers were required to keep a register of the names, addresses and earnings of all female workers and to permit inspection of the register by any member or representative of the Board. The Board was authorized to grant special licenses for the employment of apprentices and physically defective persons, permitting their employment at a stated minimum wage less than the standard. The act was limited in its application to cities and incorporated towns, but the Governor in Council, on recommendation of the Board, could order that it should apply to any part of the province. This act was not proclaimed in force until May 1, 1924.

A new law was passed in the session of 1924 (c. 57) which applied to "every female person in any trade or occupation in Nova Scotia who works for wages," with farm workers and domestic servants expressly excepted. The law provided for a Minimum Wage Board of five members, two of whom should be women. The Board was empowered to establish a minimum wage and maximum hours and also a rate of wages for overtime. It could establish a

rate lower than the minimum for handicapped or part-time employees or apprentices. The Board was authorized to make different orders for the same industry in different localities; to suspend temporarily, vary or revise any of its orders and to make all necessary regulations. The Governor in Council was authorized to make regulations to assist in the administration of the act.

### *Ontario*

A minimum wage law enacted in Ontario in 1920 (c. 87) applied to females working for wages in any trade or occupation, not including farm laborers or domestic servants. The law was to be administered by a Minimum Wage Board of five members, two of whom should be women. The Board was authorized to establish a minimum wage for employees in any trade, occupation or calling and to fix a wage lower than the minimum wage for employees classified as handicapped, or part-time employees, or as apprentices. When in the opinion of the Board the scale of wages paid any class of employees appeared inadequate or unfair they could arrange a conference between equal numbers of representatives of the employers and employees concerned, with a distinterested person appointed by the Board as chairman but without voting power. Upon receipt of the report of such a conference the Board could recommend matters of difference to the same or a new conference or could establish a minimum wage forthwith. The Board was organized in November, 1920, and in January, 1921, adopted regulations which required all employers of female labor to keep records of the names of workers and wages paid and to hold such records available for inspection by the Board's agents. Minimum rates of wages have been established for female workers in almost the whole industrial field.

Sections were added in 1921 (c. 78) giving the Board

power, on petition of employers or employees or on its own motion, to suspend temporarily, vary or revise any of its orders in accordance with special or changed conditions in any industry or establishment. It could also make different orders for the same industry or industries in different localities of the province when in its judgment such action was justified. An amendment in 1922 (c. 91) gave the Board additional power to establish maximum hours and wage rates for overtime.

SUMMARY

Provision for the payment of fair wages on government contracts was made first in Canada by the Dominion Government when the House of Commons resolved in 1900 that the wages current in the district should be paid on government works. An amendment looking to the better observance of the resolution was adopted in 1907 and its scope was broadened considerably in 1922. British Columbia adopted the fair-wage policy of the Dominion Government in 1900 but the Province of Manitoba brought the fair-wage legislation to its fullest development by an act of 1916, which established a Fair Wage Board charged with the duty of recommending minimum wages and maximum hours on provincial works. The fair-wage principle has received some recognition also in Saskatchewan, Nova Scotia, Alberta, New Brunswick and the Yukon Territory, but little progress has been made in the two most populous provinces, Ontario and Quebec. The device is quite unknown in the United States.

All of the provinces except New Brunswick and Prince Edward Island have enacted minimum wage legislation for women workers. In 1917 Alberta included in its factory act a minimum wage regulation for workers of both sexes but it was largely replaced by a minimum wage law for women

passed in 1922. The first minimum wage laws were enacted in the Western provinces, Manitoba and British Columbia leading the way in 1918. Saskatchewan followed the next year and the movement spread to the East, but there the laws were given no application to hours and working conditions as in the West. The Quebec act of 1919 was more limited in its application than the earlier measures, and the Nova Scotia law of 1920 applied only to women workers in factories and shops. However, the Ontario law of the same year provided for the establishment of minimum wages for women in any trade or occupation, not including farm laborers or domestic servants. In 1925 British Columbia passed a minimum wage law for male workers.

Until the passing of this act in British Columbia, Canadian minimum wage laws, like those of the United States, applied only to women and children. Seven provinces, with nine-tenths of the population, have such legislation, administered by minimum wage boards. In the United States since 1912 a dozen or more states, and the District of Columbia, have enacted either "flat rate" or "wage board" laws for women and children.[1] The rapid acceptance of the principle in Canada has been largely due to the active support of organized labor, in contrast to the apathetic attitude of union officials in the United States. The movement has had a greater development in Australia, the country of its origin. Beginning with Victoria in 1896 a majority of the states have established wage boards which fix wage scales for men and women workers in a number of occupations. A similar development has followed the passing of the Trade Boards Act of Great Britain in 1909.

[1] Commons and Andrews, *Principles of Labor Legislation*, pp. 195-96.

# CHAPTER VII

## A Work-Day of Eight Hours[1]

"The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained." (Treaty of Peace: Article 427, 4.)

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The following modifications are permitted in industrial undertakings: (1) exclusion of supervisory or confidential employees; (2) where the customary hours are less than eight on one or more days of the week, nine hours or less may be worked on the remaining days; (3) workers on shifts may be employed in excess of eight hours in any one day or forty-eight in any one week provided that their average number of hours in a period of three weeks or less does not exceed eight per day and forty-eight per week; (4) in continuous processes carried on by shifts the working hours may be increased to fifty-six in the week on the average; (5) the eight-hour limit may be exceeded in case of accident or urgent work to be done to machinery or plant or in case of *"force majeure"* (1919 convention). In inland navigation and the fishing industry the member nations may enact legislation limiting hours in the direction of the international standard with necessary modifications to meet peculiar climatic and industrial conditions (1920 recommendations). Employees in bakeries shall not be required to work between 11 p. m. and 5 a. m. but this period in certain cases may be changed, with the consent of both parties, to 10 p. m. and 4 a. m. (1925 convention).

According to the Report of the Royal Commission on Industrial Relations the eight-hour day has already been adopted in many industries in Canada.[2] It has been secured under industrial agreements by a large proportion of the

[1] Hours of women workers are generally regulated by the laws with respect to hours of children and young persons, and accordingly they are treated in Chapter IX.

[2] Report of commission appointed under order-in-council (P. C. 670) to enquire into industrial relations in Canada. Printed as a supplement to the *Labour Gazette*, vol. xix, at p. 860.

printers, building tradesmen, machinists, pulp and paper workers and electrical workers, and, in general, workers employed in the operation of steam railways have a basic eight-hour day.[1] But the fact remains that legal provision for the eight-hour day or the forty-eight-hour week for adult male workers has scarcely more than begun.

In the early seventies there was a vigorous Nine Hours Movement centered in the trade unions of Toronto.[2] It made substantial progress despite the Toronto *Globe's* statement: "Talk to almost any sensible mechanic of average strength and he will tell you that he does not want his hours decreased; that he does not find his present labor burdensome." [3]

The limited application of the legal eight-hour day and the forty-eight-hour week to industry in Canada cannot be attributed to any lukewarmness on the part of the trade unions. Among the various objectives of organized labor the unions have clung to the eight-hour day long and tenaciously. At the second annual meeting of the Trades and Labor Congress in 1886, D. J. O'Donoghue, one of the early labor leaders, moved:

> That this Congress would recommend to all labor organizations the agitation of the eight-hour system as the only means by which the large amount of surplus labor at present in the market of the Dominion can be employed, and a fair amount of remuneration for such labor be received.[4]

[1] For a statement on "Adoption of the 8-hour day by agreement" *cf.* "Proposed agenda and various memoranda relating to the National Industrial Conference" (September, 1919), published by the Department of Labor and bound in the *Labour Gazette,* vol. xix, at p. 1118.

[2] *Cf. supra,* p. 67.

[3] Toronto *Globe* editorial, May 20, 1872.

[4] *Trades and Labor Congress,* 1886, p. 30.

Later resolutions of the same annual meeting urged that persons employed on public works should have an eight-hour working day.[1]

The Congress continued to press for the eight-hour day, especially on public works, at subsequent annual meetings,[2] and in 1893 a private member introduced in the House of Commons "An act to determine the length of the working day for workmen and labourers on public works." In 1894 the Congress instructed a special committee to interview the Prime Minister and urge the adoption of the bill as a government measure,[3] but no action was taken and the bill failed to reach a third reading.

The first tangible results of these efforts came a decade after the first resolution and just before a Dominion election. The federal government established the eight-hour day in the Printing Bureau on May 1, 1896, and shortly after in the cartridge factory at Quebec.[4] After this gain the Congress resolved that the eight-hour day should become "the universal law of the land."[5] In 1899 the British Columbia legislature granted the eight-hour day to underground workers in metalliferous mines,[6] and at the session of 1903-4 it was extended to workers below ground in coal mines.[7] Resolutions favoring an eight-hour day on government work and an eight-hour day law were passed by the Trades and Labor Congress of 1906,[8] and at the 1907-8

[1] *Ibid.*, 1886, pp. 39, 40.

[2] *Ibid.*, 1888, p. 21; 1889, p. 22; 1890, p. 17; 1891, p. 22; 1892, pp. 20, 32; 1893, p. 11.

[3] *Ibid.*, 1894, p. 21.

[4] *Ibid.*, 1896, p. 6.

[5] *Ibid.*, 1897, p. 6.

[6] *Cf. infra*, p. 241.

[7] *Cf. infra*, p. 242.

[8] *Trades and Labor Congress*, 1906, pp. 55, 56, 57, 58.

session of the Dominion Parliament a bill for the establishment of the eight-hour day on public works was introduced by Mr. Alphonse Verville, at that time president of the Trades and Labor Congress. Although the bill did not come to a vote it was destined to have an important place in parliamentary debate for the next two years. The Parliamentary Committee of the Canadian Manufacturers' Association thought "it would likely prove but the thin edge of the wedge, to be followed another year by a bill to make the eight-hour day compulsory everywhere." The committee informed the association that they "instituted a vigorous campaign in opposition to the bill and . . . it is gratifying to be able to report that the measure was withdrawn in order to save it from certain defeat." [1]

At the same session Mr. Ralph Smith introduced a bill to give the eight-hour day to railway telegraphers and signalmen but it did not get beyond the first reading.[2] Both of these bills were again introduced at the session of 1908-9, but they made no progress. With reference to Mr. Verville's bill, the Canadian Manufacturers' Association were advised by their parliamentary committee:

> When the bill first came up, in 1907, your committee caused the House to be canvassed very thoroughly, at the same time instituting a vigorous campaign against the measure in other quarters. So effectively was the work done that this year it was comparatively easy to obtain assurance that the bill could not carry. No doubt its mover foresaw defeat, for it was never pressed to a vote.[3]

At the session of 1909-10 Mr. Verville's bill entitled "An act respecting hours of labour on public works" was re-

[1] *Industrial Canada*, 1907-8, p. 212.

[2] *Trades and Labor Congress*, 1908, p. 67.

[3] *Industrial Canada*, 1908-9, p. 217.

ferred to a select committee of which the Honorable W. L. Mackenzie King was chairman. The committee secured the services of Professor O. D. Skelton of Queen's University, who made an exhaustive study of legislation respecting the hours of labor on public works in other countries. Several witnesses were heard, including the secretaries of the Canadian Manufacturers' Association, the Trades and Labor Congress and the Shipping Federation of Canada, and expressions of opinion were secured by correspondence from trade unions, boards of trade, manufacturers and others. The report of the Select Committee [1] fills a thick blue book but the House took no action on the bill.

In Nova Scotia meanwhile the coal miners' unions were pressing for an eight-hour-day law, and in 1908 (c. 14) the provincial government appointed a commission of three members "to enquire into and report upon the economic effect of a limit to a working day for the workmen employed in the various industries in Nova Scotia, with especial reference to the effect of such limitation upon the following matters: (a) production, (b) wages, (c) employment, (d) export trade, (e) Canadian industries." The employers' side of the case seems to have been well prepared. It was reported in *Industrial Canada* that "before the Commission entered upon its labors, most of the members of the Canadian Manufacturers' Association in Nova Scotia were personally visited by the solicitor engaged and thoroughly advised as to the kind of evidence it was desirable to bring out." [2] The unions complained that almost all the evidence submitted, except that from Halifax and Sydney, came from unorganized sections of the province.[3] The Commission re-

[1] Proceedings of the Special Committee on Bill No. 21 "An Act Respecting Hours of Labour on Public Works" comprising reports, evidence and correspondence. Dec. 9, 1909–May 3, 1910.

[2] *Industrial Canada*, October, 1909, p. 273.

[3] *Trades and Labor Congress*, 1910, p. 29.

ported in 1910 that "a general and compulsory provincial eight-hour law would be at present a fatal blow to the industrial prospects of Nova Scotia."

While the Nova Scotia commission was pursuing its investigation the question of shorter working hours was brought to the attention of the Ontario Legislature. During the 1909-10 session a bill was introduced which proposed to establish eight hours as the legal working day and to fix minimum wages, but it was subsequently withdrawn. A second bill proposed an amendment to the Municipal Act by which every city with a population of 100,000 should be required to fix a nine-hour day on all civic contracts. The parliamentary committee of the Canadian Manufacturers' Association, reporting on these bills, stated:

> Through the efforts of your committee, the Toronto branch legislative committee, and other employing interests, this bill was defeated before the municipal law committee. The tone of the Legislature was found to be decidedly hostile to restrictive measures of these kinds and it is not likely that either bill will be revived.[1]

In the Dominion House, Mr. Verville's eight-hour bill in amended form was again introduced on November 23, 1910. On the second reading there was some lengthy discussion when the House went into committee, and the bill as finally passed by the House of Commons applied only to the construction of government buildings. At the end of the session the bill was left in committee in the Senate.

When Sir Robert Borden's Government came to power in 1911 the trade unions continued their efforts to secure the eight-hour day by legislation. Mr. Verville's bill was again introduced, the government was requested to bring in an eight-hour day bill and the pressure was continued on the

[1] *Industrial Canada*, October, 1909, p. 273.

Dominion and provincial governments. In negotiations with employers also the eight-hour day was kept to the fore and was frequently conceded.[1] In the Ontario Legislature in 1913 the veteran labor leader, Allan Studholme, introduced an eight-hour bill which was defeated, but in the same session the eight-hour day was granted to the miners of the province.[2] At this time also the Trades and Labor Congress went on record as favoring an eight-hour day for letter-carriers throughout the Dominion.[3]

The eight-hour day was continuously the subject of resolution at the annual Congresses.[4] The question was also forced on the attention of the provincial governments by the provincial executives of the Trades and Labor Congress in Alberta,[5] Saskatchewan[6] and Manitoba.[7] In 1917 the Ontario executive committee requested that the eight-hour day granted to the miners in that province should be counted from the time the men entered the shaft until they returned to the surface.[8] In 1917 and 1918 resolutions in favor of the forty-four-hour week came for the first time into the records of the Congress[9] and in 1918 also the Alberta Federation of Labor asked for the enactment of legislation to provide for a maximum work-day of six hours for all underground mine workers.[10] In 1917 the Congress changed

[1] *Trades and Labor Congress*, 1913, p. 35.

[2] *Cf. infra*, p. 246.

[3] *Trades and Labor Congress*, 1912, p. 68.

[4] *Ibid.*, 1912, pp. 78, 87, 106, 111; 1913, pp. 144-5; 1916, p. 103; 1917, pp. 27, 179, 180; 1918, pp. 28, 97.

[5] *Ibid.*, 1912, p. 29.

[6] *Ibid.*, 1915, p. 22.

[7] *Ibid.*, 1915, p. 24.

[8] *Ibid.*, 1917, p. 54.

[9] *Ibid.*, 1917, p. 71; 1918, pp. 57, 60, 61; 1920, pp. 15, 21, 99.

[10] *Ibid.*, 1918, pp. 57, 94.

the eight-hour plank in its Platform of Principles to a six-hour plank but reverted to its former position in 1923.

The "Declaration of War Labour Policy," issued by the Dominion Government in 1918, urged for the period of the war "that in all cases where eight hours is by law or agreement the basic day, it shall so continue. In all other cases the question of hours of labour should be settled with due regard to governmental necessities and the welfare, health and proper comfort of the workers." [1]

The Congress reaffirmed its position on the eight-hour day at different times after the Armistice [2] and several of the provincial executive committees took the subject up again with their legislatures.[3] With the insertion of the eight-hour clause in the Labor Section of the Treaty of Peace the Congress asked the Dominion Government to pass the necessary legislation,[4] and when the Government decided that the subject was not within federal jurisdiction attention was directed to the provincial legislatures.[5] In the Nova Scotia legislature in 1919 (c. 24) authority was given for the appointment of a commission on the eight-hour day, the legislature reviving for this purpose the statute which gave authority for the commission on the same subject a decade before (1908, c. 14), and early in 1921 (c. 22) the British Columbia Government passed a law which provided for the establishment of an eight-hour day in the province whenever similar legislation should be adopted in the other provinces. Later in the same year a motion was introduced in the British Columbia House to bring the law into effect on May 1,

[1] *P. C.* 1743. Report of the Committee of the Privy Council, approved by His Excellency the Governor General, July 11, 1918.

[2] *Trades and Labor Congress*, 1919, pp. 32, 61, 73; 1920, p. 16.

[3] *Ibid.*, 1919, pp. 82, 88, 90.

[4] *Ibid.*, 1920, p. 156.

[5] *Ibid.*, 1920, p. 185.

1922, without regard to the action of the other provinces. The British Columbia division of the Canadian Manufacturers' Association submitted a memorandum in opposition to this motion [1] and no change was made in the legislation as passed at the spring session. The legislature, however, in 1923 (c. 22) provided that the eight-hour day in "industrial undertakings" should come into effect January 1, 1925.

The pages which follow outline the development of legislation for the reduction of working hours in various occupations.

### INDUSTRIAL UNDERTAKINGS

#### *British Columbia*

In 1921 (c. 22) the British Columbia Legislature passed the Hours of Work Act which restricted the hours of labor in any industrial undertaking to eight in the day and forty-eight in the week. The term "industrial undertaking" was so defined as to exclude any branch of the agricultural, horticultural or dairying industry, and persons employed in management or in a confidential capacity were excluded from the hours' provision. Where by agreement of employers and workers the hours on one or more days of the week were less than eight, the eight-hour limit could be exceeded by agreement on the remaining days but in no case could the daily hours exceed nine or the weekly hours forty-eight. Employees working in shifts could be employed over the daily and weekly limits, provided that in a period of three weeks the hours would average eight for the day and forty-eight for the week. The hours' limit could be extended to fifty-six in the week on the average in continuous processes. The law empowered the Lieutenant-Governor in Council to make other permanent and temporary exceptions but only after consultation with the organ-

[1] *Industrial Canada*, December, 1921, p. 63.

izations of employers and workers concerned and the organizations were to fix the maximum of additional hours. The scale of pay for overtime was not to be less than one and one-quarter times the regular rate. It was provided that the act should not come into force until the other provinces of the Dominion should bring similar laws into operation, and as no other such legislation was passed the act was not proclaimed.

The main provisions were reenacted by the Hours of Work Act of 1923 (c. 22). This later law provided for a Board of Adjustment of three members, the chairman to be the Deputy Minister of Labor. The Board was given full powers of investigation and was authorized to grant permanent and temporary exemptions, determining the maximum of additional hours in each case. As in the act of 1921, in cases where the eight-hour limit would not apply, the Board could give the force of regulations to industrial agreements concerning the daily limit of work over a longer period, but in no case could the number of hours per week average more than forty-eight over the number of weeks covered by the agreement.

It was provided that the regulations should require employers to post notices of the hours of beginning and ending work and the rest hours, and to keep records of all additional hours of work. The Board was authorized on enquiry to exempt any industrial undertaking in whole or in part from the operation of the act from time to time or for such seasons as might be deemed necessary. The act came into force on January 1, 1925.

### MINES AND SMELTERS

#### *British Columbia*

In 1898 a resolution of the Trades and Labor Congress declared that throughout the British Empire underground

mining operatives had a maximum work-day of eight hours except in the metalliferous mines of British Columbia and Ontario, and instructed the executive committees of these two provinces to approach their provincial legislatures on the subject.[1] At the next session of the British Columbia House in 1899 (c. 49) an amendment to the Inspection of Metalliferous Mines Act provided that no person should be employed underground in any metal mine for more than eight hours in every twenty-four. According to a statement of the British Columbia executive committee of the Trades and Labor Congress this provision was strictly enforced despite strong opposition from the Mine Owners' Association.[2]

An amendment of 1901 (c. 37) fixed the hours of labor for stationary engineers at eight per day. This provision applied to engineers employed in or about metalliferous mines where any direct-acting, geared or indirect-acting hoisting machine exceeding fifty horse-power, or any stationary engine or electric motor exceeding fifty-nine horse-power was operated for more than twenty hours in any twenty-four. It was made an offence for engineers employed on such machinery to work more than eight hours in twenty-four, and mine operators inducing engineers to work longer hours were also deemed guilty of an offence under the act. Exception was made to permit of longer hours for the relief of another employee in case of accident, sickness or other unforeseen cause.

In 1917 the unions asked that an eight-hour day from bank to bank should be established,[3] and this was granted by an amendment of the following year (c. 55), which also provided for an eight-hour day for employees above as well

[1] *Trades and Labor Congress*, 1898, p. 35.

[2] *Ibid.*, 1900, p. 14.

[3] *Ibid.*, 1917, p. 71.

as below ground except persons employed in offices, boarding houses and bunk-houses. This amendment became operative on March 31, 1919.

Statutory regulation of the hours of adult workers in coal mines began in British Columbia in 1903-4 (c. 38) with an amendment to the Coal Mines Regulation Act. This measure provided that no person should be employed underground in any coal mine for more than eight hours from bank to bank in every twenty-four hours. The law did not become operative until July 1, 1905. In reporting on the subject at the annual meeting in 1905 the British Columbia executive committee of the Trades and Labor Congress stated that although there had been no statutory regulation of the hours of labor in coal mines before this enactment, the eight-hour day had been generally accepted. However, in shaft mines the starting and quitting time commenced and ended at the bottom of the shaft, and in slope mines at a given point in the slope, rather than at the mouth of the shaft or slope, or from "bank to bank" as required by the new provision. The committee reported that all the coal-mining companies had accepted the new conditions with the exception of the Western Fuel Company, which had not operated its mines from the time the law became effective.[1]

By an amending act of 1905 (c. 35) it was made clear that the penalties of the original act applied in the case of the amendment just indicated. This amendment was found necessary because of the dismissal of a charge brought by the union against a miner for working more than eight hours in one day, in violation of the act. The miner was fined by two justices of the peace but a higher court ruled that as the section under which the charge was laid did not provide that the act of working overtime was an offence

[1] *Trades and Labor Congress*, 1905, p. 19.

under the law, the justices had no jurisdiction.[1] In a similar violation after the passing of the amendment the miner and the manager of the colliery were both fined.[2]

By the consolidating law of 1911 (c. 33) another exception was made. It was provided that where more than two shifts were worked, workers of certain specified occupations might be relieved at the place of duty. In no case could any such person remain underground more than eight hours and thirty minutes from "bank to bank" in any one calendar day of twenty-four hours, although extra hours for such persons were permitted when necessitated by a weekly change of shift where more than two shifts were worked. The exemptions in case of emergency were extended to permit longer hours of employment in order to save property in case of accident, and it was made clear that the manager or overman was in no way prohibited from entering a mine and remaining there at any time in the necessary discharge of his duties. Exemption was also made in the case of pumpmen or engineers in charge of constantly running machinery who had to deal with an emergency requiring immediate attention and which, if neglected, would necessitate the closing of the mine. Penalties were applied to persons receiving payment for work in excess of the legal hours as well as to persons making the payment.

In 1918 (c. 54) a provision with regard to hours of employment above ground was added. These hours were limited to eight in twenty-four but the limitation did not apply to persons employed in the office, boarding-house or bunkhouse of any mine, nor to persons detained more than the legal number of hours in order to save or protect life or to save property in case of accident.

[1] Rex *v.* Carroll, Ladysmith, B. C., June 7, 1905. *Labour Gazette*, vol. vi, p. 229.

[2] Rex *v.* Anea; Rex *v.* Matthews, Nanaimo, B. C., Nov. 4, 1905. *Labour Gazette*, vol. vi, p. 693.

The trade unions in British Columbia failed in an effort to secure the eight-hour day for smelter workmen in 1905,[1] but they were successful in 1907 (c. 23) when the Labor Regulation Act was passed. This law provided that no person should be "employed in or about any smelter, sorting, handling, removing or smelting ores, slag or matter in any stage of preparation for a longer period than eight hours in any twenty-four hours" and penalties were imposed on both employer and employee for violation of this provision.

An amendment was added in the 1908 session (c. 28) which permitted employment of workmen on days when shifts were changed for whatever longer periods might be necessary to make the change.

In 1911 the provincial executive of the Trades and Labor Congress asked that the eight-hour legislation should be extended to all men employed in and around smelters, stamp mills, concentrators and rock-crushers, but at that time the government refused to carry out the request.[2]

In 1918 (c. 40) the act was amended to apply as well to workers in coke-ovens, concentrators and mineral-separation plants. This did not apply to persons employed in the offices, boarding-houses or bunk-houses connected with those plants, and it was provided that the eight-hour day might be exceeded in case of accident.

### *Northwest Territories*

The Northwest Territories in an ordinance passed in 1899 (c. 4) amended its Coal Mines Regulation Ordinance by adding a provision that the hours of employment underground in coal mines should be limited to eight in every twenty-four hours, exclusive of the time taken in descending

[1] *Trades and Labor Congress*, 1905, p. 19.

[2] *Ibid.*, 1911, p. 19.

and ascending from the mine. This clause was repealed, however, in 1900 (c. 3).

*Alberta*

In the province of Alberta the hours of employment in mines were established by a law of 1908 (c. 17) entitled "An act to amend the Coal Mines Regulation Act for the purpose of limiting the hours of work below ground." This law provided that coal miners should not be employed underground more than eight hours during any consecutive twenty-four hours, the work-period to be counted as the time between leaving the surface and returning to the surface. Longer hours were permitted in case of accident or emergency and a repairing shift, to avoid Sunday work, might begin work on Saturday after only eight hours' rest. The eight-hour limit applied to all except officials of the mine and a few specified occupations. The workmen in any coal mine were given the right to appoint at their own cost one or more of their number to observe the times of raising and lowering men at the shaft, and it was required that the times of raising and lowering should be entered in a register and the cause of any detention of the miners underground past the eight-hour limit was also to be explained in the register. The Lieutenant-Governor was empowered to suspend the regulations as to hours of work for all or any class of miners "in the event of great emergency or of any grave economic disturbance due to the demand for coal exceeding the supply available at the time." There has been no change in these provisions.

*Ontario*

In Ontario, legislation with regard to hours of labor in mines was confined until 1913 to the regulation of hours for boys. As early as 1899 the Trades and Labor Congress

instructed its Ontario executive committee to work for an eight-hour day for employees underground,[1] but the request was not pressed vigorously until a decade later. In 1908 the committee advised the Congress that they had urged this matter upon the attention of the provincial government,[2] and the next year they reported another call upon the government, during which the discussion on this point "was quite warm between Vice-President Simpson and Premier Whitney."[3] In 1910 the committee again reported having asked for a miners' eight-hour day law,[4] and they reported two years later on a request for an eight-hour shift wherever work was continued for twenty-four hours.[5]

In 1913 (c. 10) "An act to amend the Mining Act of Ontario in respect to the hours of underground employment" was placed on the statute books. *Industrial Canada* records that when the measure was introduced in the legislature a protest was made on behalf of the Canadian Manufacturers' Association—

> against the principle of restricting by law the freedom of employer and employee to adapt the terms of their employment to their mutual convenience. Assurances were received that the legislation adopted by the government was based upon the special circumstances and conditions of employment in mines and not to be taken as implying any general approval of the principle of fixing an eight-hour day by law.[6]

This law brought into force the hours of employment in mines as they now stand in the province of Ontario and

[1] *Trades and Labor Congress*, 1899, p. 28.

[2] *Ibid.*, 1908, p. 23.

[3] *Ibid.*, 1909, p. 20.

[4] *Ibid.*, 1910, p. 24.

[5] *Ibid.*, 1912, p. 35.

[6] *Industrial Canada*, November, 1913, p. 484.

provides for an eight-hour day underground in mines employing more than six in a shift. It was provided that a Saturday shift might work "longer hours for the purpose of avoiding work on Sunday or changing shift at the end of the week or giving any of the men a part holiday." The limit of time was not to apply "to a shift boss, pump man, cage-tender, hoistman, or any person engaged solely in surveying or measuring" nor "in cases of emergency where life or property is in imminent danger." The suspension of these hours by the Lieutenant-Governor in Council was permitted in case of great emergency or grave economic disturbance, and the provisions of the law might be suspended on recommendation of the Minister of Mines if the inspector certified that the arrangements for protecting the health, safety and comfort of workmen in iron mines were satisfactory. By the legislation of 1919 (c. 12) the inspector's certification was not required.

*Yukon Territory*

A law of 1921 (c. 5) provided that no person should be employed underground in any shaft or tunnel in or upon any mineral claim for a longer period than eight hours in any twenty-four hours, except as might be necessary in changing shifts or in case of emergency.

*Nova Scotia*

Nova Scotia amended its Coal Mines Regulation Act in 1924 (c. 18) by the addition of a section (39a) which provided that a workman should not be employed below ground for longer than eight hours during any consecutive twenty-four hours, accident or emergency excepted.

FACTORIES

*Alberta*

The Factories Act of Alberta, passed in 1917 (c. 20) was the only legislation for the regulation of the hours of adult male workers employed in factories until the enactment of the British Columbia Hours of Work Act, 1923, which became effective January 1, 1925.[1] The Alberta act applied also to laundries.

The Alberta law was not accepted graciously by employers. *Industrial Canada* described it as "containing a number of provisions of a drastic character that would be humorous if they were not so serious." Attention was drawn to various parts of the act "to show how ill-considered the legislation was, and how urgent is the need for amending it."[2] The law provided that the work-day for any person working day shift should not begin earlier than 7 a. m. nor end later than 6 p. m., and the hours for any person working night shift were limited to eight. The inspector was authorized to permit employment for a longer period on either shift for special reasons of trade or accident. No person could be employed on more than one shift in one day and a worker employed in one factory could be employed on the same day in another factory only for such time as would total one eight-hour day for both work-places. Employers were required to allow every employee not less than one hour between 11 a. m. and 2 p. m. each day for meal time.

In 1919 (c. 4) sections were added providing for an advisory committee to make recommendations as to hours and wages. The committee was empowered in 1920 (c. 40) to investigate and determine the maximum work-period but

[1] *Cf. supra*, p. 240.

[2] *Industrial Canada*, July, 1917, p. 437.

in 1921 (c. 41) their powers were limited to investigation and recommendation.

### *British Columbia*

British Columbia is the only province that has regulated hours in laundries apart from the general regulations of the factories acts. A section was added to the Factories Act in 1919 (c. 27), which was probably directed at laundries operated by Orientals and which provided that no one should be employed in any laundry run for profit, except as watchman or in the work of maintaining heat or steam, for longer hours than between 7 a. m. and 7 p. m. In 1922 (c. 25) work was forbidden on any holiday as defined in the Interpretation Act. All "industrial undertakings," including laundries, were limited to an eight-hour day by the Hours of Work Act of 1923, which became effective January 1, 1925.[1]

## SHOPS AND BAKESHOPS

### *Ontario*

The first early-closing laws were passed in Ontario and Manitoba in 1888. The Ontario act (c. 33) empowered any local council to pass a by-law requiring all or any class of shops to remain closed after any time not earlier than 7 p. m. On receiving a petition signed by at least three-fourths of the occupiers of any class of shops, requesting the closing of such shops at a stated time, the local council was required to pass a by-law giving effect to the petition. The council could repeal the by-law if one-third of the occupiers of shops in the class of trade affected made it clear that they were opposed to its continuance. No by-law could prohibit chemists and druggists from supplying medicines and drugs after the hour stated and a like exemption was made to enable the occupier of any premises to supply articles to persons

[1] *Cf. supra*, p. 240.

lodging on the premises or any article required for immediate use by reason of an emergency. While the law was under consideration by the provincial government the parliamentary committee of the Trades and Labor Congress waited on the minister in charge of the bill, suggested a number of amendments, some of which were accepted, and urged the enactment of the measure.[1]

In the law of 1888 a local council was defined as a council of a city, town or incorporated village. In 1889 (c. 44) the definition was extended to include the municipal council of any township having an unincorporated village. This amending act also withdrew the authority granted to municipal councils to require shops to remain closed after 7 p. m. or a later hour. Instead the local councils were authorized to require the closing of shops from 7 p. m. to 5 a. m. of the next day. A further amendment authorized the sale of articles for use on boats to persons employed thereon or to passengers.

The trade unions objected to the provision that an early-closing by-law could be repealed on petition of one-third of the merchants. In their view the same number of signatures should have been required for the repeal of the by-law as for its passage and they suggested that the act should be amended accordingly.[2]

The first legislation with regard to hours in bakeshops was passed in 1896 (c. 64) when it was enacted that no one should be employed in a bakeshop more than sixty hours in any week, so defined as to exclude Sunday, except with the written permission of an inspector. This legislation, which was embodied in the "Act respecting shops and places of business other than factories" in 1897 (c. 51), provided further that no worker should be employed on Sunday nor for

[1] *Trades and Labor Congress*, 1888, p. 11.

[2] *Ibid.*, 1893, p. 13.

more than twelve hours on any one day except by written permission of the inspector. It was also required that a copy of the inspector's communication in the matter should be displayed in a conspicuous place in the bakeshop. These provisions were reenacted in 1901 (c. 36), forbidding the employment of workers in bakeshops on Sunday or for more than twelve hours in any twenty-four hours, computed from the time when the employee began work, or more than sixty hours in any one week, computed as commencing on Monday and ending on Saturday, except with the written permission of the inspector. The unions protested that this law, in permitting the day to be computed from the time when the employee began work, ignored night work entirely,[1] and although there have been more recent protests [2] as well, no change in the legislation has been made.

In 1913 (c. 60) a consolidating act was passed, combining the Factories Act, the Shops Regulation Act and the laws with respect to bakeshops and barber shops. The legislation empowering the municipalities to pass by-laws regulating hours in shops was continued as Part II of this act.

By an amendment of 1920 (c. 86, s. 3) the Ontario Legislature rendered the early-closing by-laws ineffective in so far as they applied to the sale of fresh fruit, and it was provided that all future early-closing by-laws should not apply to the sale of fresh fruit.

### *Manitoba*

Legislation on the early closing of shops has much the same history in Manitoba as in Ontario. In 1888 (c. 32) the legislature passed an act which gave authority to municipal councils to fix an hour for the closing of shops not earlier than 7 p. m. The same exemptions were granted as in the Ontario law. By a law of 1894 (c. 32) instead

[1] *Ibid.*, 1901, p. 43.

[2] *Ibid.*, 1920, p. 102.

of the powers first granted the municipalities, they were authorized to require the closing of shops between 7 p. m. and 5 a. m. of the next day. The closing hour 7 p. m. was changed to 6 p. m. by a law of 1900 (c. 49). This legislation remained unchanged except for an amendment in 1907 (c. 40) as to the goods druggists might sell after closing hours, an amendment of 1911 (c. 54) empowering rural municipalities to exercise these powers in a portion of the municipality and an amendment of 1921 (c. 67) by which sections were added empowering any municipal council to adopt certain definitions and regulations as to " confectioner, fruiterer, tobacconist, news agent, hotel and refreshment house " and to provide that goods or commodities mentioned in any one or more of the sections might be sold in any class of shops defined without such shop being brought within the provisions of the act as to hours of closing.

After repeated requests from the trade unions, the province of Manitoba in 1898 passed a bakeshops act (c. 2) similar to the measure in Ontario, but the provisions of the Ontario law for the regulation of hours were omitted. The unions protested, and in 1899 (c. 2) a clause was added limiting the hours in bakeshops to twelve in any one day and sixty in any one week except by written permission of the inspector. The unions complained that as the appointment of inspectors was left optional with the municipalities, the legislation was practically inoperative.[1] In 1916 (c. 5) however it was provided that inspectors of the Bureau of Labor as well as of municipalities could inspect bakeshops.

*Quebec*

The Trades and Labor Congress resolved in 1889 to petition the Quebec Government to pass a law requiring stores to close at 6 p. m. except on Saturday.[2] A bill for the early

[1] *Trades and Labor Congress*, 1899, p. 11.

[2] *Ibid.*, 1889, p. 24.

closing of stores in cities and towns was introduced in the legislature by a private member in 1892,[1] and in 1894 (c. 50) legislation on this subject was passed. This law authorized the municipal councils of cities and towns to make, amend or repeal by-laws ordering that stores of any class should be closed on any or every day of the week for the time stated and during the whole or any part of the year. The hours fixed by the by-law could not be later than 7 a. m. nor earlier than 7 p. m. In 1919 (c. 85) the powers of the local corporations in this matter were extended to "every store, shop, stall or other place of one or the other class, where any local business is carried on." The provisions as to early closing in shops were incorporated in the Municipal Code as part of Article 403. An amendment of 1924 (c. 59) provided that by-laws could permit closing as early as 6 p. m. instead of 7 p. m.

In August, 1919, the city of Montreal passed a by-law which required stores to be closed at 7 p. m. on Monday, Tuesday, Wednesday and Thursday of each week, at 9 p. m. on Friday and 11 p. m. on Saturday. Tailors, merchant tailors, milliners and women dealing in novelties and needlework were allowed to keep their shops open until 9 p. m. on Monday provided no employee was required to work between 7 p. m. and 9 a. m. Retail traders and their employees have asked for a further reduction of the hours,[2] and the Retail Employees' Association has strongly opposed a suggestion that the by-law should be repealed.[3]

### *Northwest Territories*

An ordinance of the Northwest Territories passed in 1894 (no. 24) empowered any municipal council to pass a

[1] *Ibid.*, 1892, pp. 6, 12.

[2] *Labour Gazette*, vol. xxv, p. 97.

[3] *Ibid.*, p. 1165.

by-law requiring shops to close at any hour not earlier than 7 p. m. The council was also required to pass such a by-law on petition of three-fourths of the occupiers of shops of any particular class. This by-law could be repealed on receipt of a petition signed by one-half of the occupiers of the shops. This was superseded by the Municipal Act of 1897 (no. 8) which empowered the council of every municipality to pass by-laws for the enforcement of closing at any specified hour of "all wholesale and retail shops, stores or other places where any mercantile business is carried on, provided the council is requested to do so by a petition signed by three-quarters of the rate-payers of the municipality who are engaged in any such line of business."

*Nova Scotia*

In 1896 the province of Nova Scotia passed the Halifax Shops Regulation Act (c. 29) which empowered the Halifax city council to pass by-laws requiring shops to be closed for not more than three days in the week from any hour fixed after 7 p. m. during the whole or any part of the year, except the months of April, May, November and December. If the occupiers of three-fourths of the shops voted for such a by-law the city council was required to enact it within one month. The by-law might be repealed if more than three-fourths of the occupiers of shops were opposed to its continuance.

This act was repealed in 1902 by the Halifax Early Closing Act (c. 43). The new law required that on presentation of a petition signed by two-thirds of the shopkeepers in any class or classes of trade, requesting that the shops should be closed on Tuesday, Wednesday and Thursday of each week at 6:30 p. m., except when these days preceded a holiday, and should remain closed until 5 a. m. of the following day, the council should make provision

accordingly by by-laws. The by-law could be repealed when two-thirds of the occupiers of the shops were opposed to its continuance. It was stated that no ordinance should apply to drugstores, hotels, restaurants and certain other lines of business. When the bill was introduced it provided for the early closing of the stores five evenings in the week. The Trades and Labor Council of Halifax strongly favored the bill in this form and it was approved by the Assembly, but in the Legislative Council early closing was limited to three evenings in the week.[1] By an amendment of 1903 (c. 79) shopkeepers in the city of Halifax were not required to close at the hours stated in the act during the month of December.

In 1910 a bill was introduced for the establishment of a ten-hour day in shops and offices,[2] but there was no further legislation until 1917, when the Towns Incorporation Act was amended by a law (c. 27) which empowered town councils to pass by-laws for the early closing of retail stores. The councils were given power to require the closing of shops during any hours and on such days of the week as they might think advisable.

The 1920 session of the Nova Scotia Legislature amended the Halifax Early Closing Act. This amendment (c. 88) restricted the establishment outside the scope of the act to hotels and restaurants. Occupiers of shops were permitted to petition the city council for an ordinance directing that every shop engaged in a particular class of trade should remain closed on such days and hours as might be indicated in the petition. It was required that the petition should be signed by three-fourths of the persons engaged in the class of trade to which the ordinance would apply.

[1] *Trades and Labor Congress*, 1902, p. 42.

[2] *Ibid.*, 1910, p. 29.

### *British Columbia*

The Shops Regulation Act of British Columbia, passed in 1900 (c. 34), required that any municipal council on petition of three-fourths of the occupiers of any class of shops should pass a by-law providing that such shops should close on any specified day of the week at any hour after 6 p. m. except that noon closing might be required for half-holidays. As in the Ontario and Manitoba laws druggists might retail medicines, drugs or medical appliances after the hour appointed for closing, the occupiers of any premises could supply articles to lodgers on the premises and articles required in an emergency such as sickness could be supplied by any store. The by-law could be repealed if more than one-half of those affected were opposed to its continuance.

An amendment of 1901 (c. 34) provided that the law of 1900 applied to the cities of Vancouver and New Westminster. Special sections relating to bakeshops were added by this amendment at the request of the Bakers' Union of Vancouver, according to the report of the British Columbia executive committee of the Trades and Labor Congress.[1] Sunday work in bakeshops and employment for more than twelve hours in one day or sixty hours in the week, except by special permission of the inspector, was prohibited.

In 1905 the British Columbia executive committee of the Trades and Labor Congress reported that the legislature had given some attention to a bill to amend the Shops Regulation Act, requiring all shops to be closed at 6 p. m. except on Saturday, when the hour for closing was fixed at 9 p. m. The bill also provided for a weekly half-holiday.[2]

By an amendment in 1907 (c. 35) municipalities in the electoral districts of Fernie and Cranbrook were permitted

[1] *Trades and Labor Congress*, 1901, p. 35.

[2] *Ibid.*, 1905, p. 20.

to fix five o'clock as the closing hour instead of six o'clock, and this provision was extended to the whole province by a law of 1922 (c. 65). This latter amendment also required that those signing the application for an early closing by-law should be entitled to vote at municipal elections.

The business of a barber or hairdresser, when not carried on in the customer's residence, had been brought within the scope of the act in 1915 (c. 57) and an amendment of 1923 (c. 61) struck out premises for the sale of liquors and auction rooms from the definition of the term " shop " and authorized municipal councils by by-law to require hawkers and peddlers not to pursue their callings during the time shops were closed under the Shops Regulation Act or the Weekly Half-Holiday Act.

### *Saskatchewan*

In Saskatchewan, the ordinance of the Northwest Territories [1] was in force until provisions as to the early closing of retail stores were enacted by the legislature of the province. These first appeared in 1909 (c. 21, s. 4) in the City Act, when city councils were authorized to pass by-laws requiring any class of shops to be closed between 7 p. m. and 5 a. m. Such a by-law was to be passed only upon petition of not less than three-fourths of the occupiers of the shops concerned. The by-law could be repealed if more than one-third of the occupiers affected were opposed to its continuance. Any penalties imposed could not apply to druggists for supplying medicines, drugs or medical appliances after hours, nor to occupiers of any premises for supplying any article for immediate use because of an emergency arising from sickness or death. Barbers' shops were added to the scope of the act in 1910-11 (c. 18, s. 4) and the hour of

[1] *Cf. supra*, p. 254.

closing was changed from 7 p. m. to 6 p. m. in 1912-13 (c. 27, s. 9).

In 1916 (c. 19, s. 195) practically the same provisions were incorporated in the Town Act and in the session of 1918-19 (c. 36, s. 9) in the Village Act except that in villages it was necessary that more than one-half of the occupiers of the shops affected should be opposed to the by-law before it could be repealed, rather than one-third of the occupiers as in the City and Town Acts. In 1920 the City Act (c. 34) and the Town Act (c. 35) were amended to allow councils to amend the by-laws on petition of three-quarters of the occupiers of shops in the municipality of the class affected.

An amendment of 1921-22 (c. 36) changed the definition of the term "shop" in the City Act to include premises where goods were exposed for sale by public auction. Similar changes were made in the definition of the term "shop" in the Town Act by a law of the same year (1921-22, c. 37).

*New Brunswick*

In New Brunswick no laws for the regulation of hours in shops were enacted until 1911 but shop employees seem to have been fairly successful in securing shorter hours through negotiations with the merchants. As far back as 1901 the Trades and Labor Congress was advised by the New Brunswick executive committee:

> The early-closing movement has been inaugurated with a great boom. The grocers' clerks agitated for shorter hours, and with such success that nearly all the grocery stores close at 7 p. m. except on Saturday. This was followed by the clothiers, tailors, barbers and butchers, and now the drug clerks are seeking for shorter hours.[1]

The Early Closing Act of 1911 (c. 15) provided that in

[1] *Trades and Labor Congress*, 1901, p. 40.

any city or incorporated town the council might require all shops to be closed between 6 p. m. and 5 a. m. on each or any day of the week except Saturday. Early closing was not made obligatory on the day preceding certain public holidays nor during the last three weeks in December, and persons who closed their shops on Saturday at one o'clock were not required to observe the early closing on Friday. The sale and delivery of merchandise required in cases of death, sickness or accident was permitted. No clause providing for the repeal of the early-closing by-law was included in the act. The early closing by-law, according to an amendment of 1912 (c. 29), might " discriminate between classes of business and between the same kinds of business in different parts of the said city or town."

In 1917 (c. 33) another early-closing act replaced the law of 1911. The business of a florist was added in the definition of " shop " but the sale of liquor by retail was omitted. The first two weeks in January were added to the period in which the early-closing hours were not to apply and it was provided that on the presentation of a petition signed by three-fourths of the persons engaged in any particular line of business the council should require all such shops to be closed during the hours specified. By an amendment of 1919 (c. 50) the percentage of signatures for the petition was reduced from three-fourths to two-thirds of those engaged in any particular line of business. This proportion, however, was again fixed at three-fourths by an amendment of 1923 (c. 21), and village councils, as well as those of cities and towns, were empowered to pass early closing by-laws.

*Alberta*

The ordinance of the Northwest Territories empowering municipal councils to pass early-closing by-laws [1] was in

[1] *Cf. supra*, p. 254.

force in Alberta until the Early Closing Act was passed at the 1911-12 (c. 23) session. This empowered the council of a city or town having a population of one thousand to pass a closing by-law for retail stores, including barber shops. The hour of closing was not to be earlier than 6 p. m., but on one specified day in the week shops might be required to close at any hour after twelve noon. Any such by-law could not apply to post offices; to the sale of medicines or medical appliances; intoxicating liquors for consumption on or off the premises, refreshments for consumption on the premises, tobacco and other smokers' requisites, or to business carried on at a railway book-stall or refreshment room. It was required that the by-law should be approved by the Lieutenant-Governor in Council. The usual provision that on receipt of a petition signed by two-thirds of the occupiers of the shops affected the council should pass such a by-law was included in the act. The by-law might be repealed if a majority of the occupiers of shops affected so desired. By an amendment to the act in 1917 (c. 3, s. 7) the definition of "shop" was enlarged to include the place where a "blacksmith or other artisan carries on his trade." It was provided in the case of blacksmith shops that the hour fixed by any such closing by-law could be any time not earlier than 5 p. m.

In 1918 (c. 4, s. 47) the requirement as to population was dispensed with and village councils as well as city and town councils were given authority to pass closing by-laws and the requirement that the by-law should be approved by the Lieutenant-Governor in Council was repealed in 1920 (c. 4, s. 12). The charter of the city of Edmonton was amended in 1923 (c. 63, s. 6) to permit the closing of retail stores on public holidays, at 6 p. m. on week days and at noon on each Wednesday from May first to September first and again in 1925 (c. 65, s. 5) to provide that by resolution these pro-

visions might be suspended during the three days preceding Christmas Day in any year.

The provisions of the Factories Act as to hours [1] apply to shops and bakeshops as well.

### RAILWAYS AND STREET RAILWAYS

#### *Canada*

A section was added to the Dominion Railway Act in 1917 (c. 37) which authorized the Board of Railway Commissioners to make regulations as to the hours of railway employees on railways subject to the Board's jurisdiction. No action has been taken under the section.

#### *Ontario*

In only two provinces—Ontario and Nova Scotia—has there been any response to trade-union requests for legal restriction of the hours of street railway workers.[2] The Ontario Electric Railway Act of 1895 (c. 38, s. 82) provided that no person should be employed on a street railway for more than ten hours in one day or sixty hours in any week or on more than six days of the week. This provision applied to every electric railway subject to the legislative authority of the province.

The Ontario Railway Act of 1906 (c. 30) which consolidated the provincial laws with respect to steam, electric and street railways, provided (s. 227) that no company operating a line of railway twenty miles or more in length should permit or require a conductor, engineer, motorman, fireman, trainman, despatcher or signalman, who had worked in any capacity for sixteen consecutive hours to go on duty again until he had been given at least six hours' rest. This section

[1] *Cf. supra*, p. 248.

[2] *Trades and Labor Congress*, 1907, p. 54; 1912, p. 111; 1913, p. 144; 1915, p. 24.

did not apply to street railways, and the provision in the act of 1895 for a ten-hour day and a sixty-hour week for street railway employees was omitted from this law. The Ontario Railway Act was amended, however, in 1909 (c. 68) by the addition of a section which provided that no street railway employee should be required or permitted to work for more than six days of ten hours each in any one week nor upon any Sunday if he had worked the previous Sunday.

In 1912 (c. 37) by an amendment to the Ontario Railway and Municipal Board Act the Board was given power to regulate the hours during which conductors and motormen employed on a street railway might be required or permitted to work. In no case could employees be permitted to work more than six days in a week or ten hours in a day, and the ten hours' work was to be performed within twelve consecutive hours whenever practicable and reasonable. The Board could exercise this power notwithstanding the provisions of any agreement between a municipal corporation and a railway company as to hours of labor.

In 1919 the unions asked for a law that would require street railways to adopt an "eight in ten hour" day[1] but there have been no further changes in the legislation with respect to the hours of street-railway employees.

### *Nova Scotia*

In Nova Scotia in 1913 (c. 52) a section was added to the act with reference to street railway companies, making it unlawful to employ motormen or conductors on street railways for more than six consecutive hours on Sunday or for more than ten hours on any week day, the ten hours to be completed within thirteen consecutive hours from the time of beginning the day's work. A proviso was added that these hours should not apply if the men were required for

[1] *Trades and Labor Congress*, 1919, p. 73.

operating a sweeper or snow-plow or to enable them to complete a run. This act applied only to the Halifax Electric Tramway Company.

### PUBLIC WORKS

#### *Manitoba*

The Fair Wage Act of Manitoba (1916, c. 121) authorized the Fair Wage Board of the province to recommend to the Minister of Public Works the maximum daily hours during which employees on provincial public works should be required to work as well as the minimum wages for such employees. The Minister was empowered to amend the recommendations as might seem advisable to him and to issue an order requiring the employers affected to comply with them. No such provision as to hours appears in the fair-wage legislation of any of the other provinces of the Dominion.

#### *The Yukon*

The only statutory regulation of the hours of persons employed on public works in Canada, other than the British Columbia eight-hour day act of 1923, is an ordinance of the Yukon Territory passed in 1917 (c. 6). This measure restricts the daily work period for persons engaged on public works in the Territory, whether employed directly by the government or by a contractor, to eight hours except in case of extraordinary emergency.

### HOTELS

In Quebec a law of 1918 (c. 53)—"An act to provide for one day of rest each week for employees in certain industries"—authorized the Lieutenant-Governor in Council to order that one day of rest a week should be given employees in hotels, restaurants and clubs, and that regulations should

be made for carrying out the act. The regulations issued provide that male and female employees in hotel offices shall not be required to work more than twelve consecutive hours in twenty-four.

### FIRE DEPARTMENTS

#### *Ontario*

The Ontario Legislature passed in 1921 (c. 80) the Fire Departments Two-Platoon Act. This law required that in places of 10,000 population or more with a permanent fire department firemen should be employed either on the plan of twenty-four hours on and twenty-four hours off duty or on the system of a ten-hour day for one platoon while the other worked fourteen on night work, with the platoons alternating weekly on day and night work.

#### *British Columbia*

The Fire Departments Two-Platoon Act of British Columbia for 1923 (c. 15) placed the fire departments of Vancouver, Victoria, New Westminster, Point Grey and South Vancouver under the two-platoon system as outlined in the Ontario law of 1921.

#### *Alberta*

In 1924 (c. 38) Alberta passed the Fire Departments Two-Platoon Act, prescribing the two-platoon system for permanent fire departments in cities and towns of 10,000 population or over.

### CHAUFFEURS

The Ontario Public Vehicle Act of 1923 (c. 49) provided that in the operation of public vehicles used in the transportation of persons or property as common carriers for compensation, drivers or operators should not be employed for more than ten hours in any twenty-four hour period.

SUMMARY

British Columbia has passed a general eight-hour day law, effective January 1, 1925, which embodies the convention of 1919, except the provision that workers on shifts may be employed in excess of eight hours in any one day and forty-eight in any one week provided their average number of hours in a period of three weeks or less does not exceed eight per day and forty-eight per week. It had granted the eight-hour day to metal miners in 1899 and to coal miners in 1904. In other provinces the legal eight-hour day is limited to mine workers underground in Alberta (1908), Ontario (1913), the Yukon (1921) and Nova Scotia (1924) and to employees on public works in the Yukon (1917). All these mining laws permit of longer hours in the case of accident or emergency, and representatives of management and employees in a few specified occupations are excluded from the eight-hour provision. The Ontario law permits a Saturday shift to work longer hours to avoid work on Sunday or changing shift at the end of the week or to give any of the men a part-holiday. In Quebec, Saskatchewan, Manitoba and New Brunswick there is no legal restriction of the hours of adult mine workers except Sunday-rest legislation.

In Alberta (1917), factory and shop employees are limited to ten hours on day shift and eight on night shift. Ontario in 1896 enacted a bakeshops act which limited the hours of employees to sixty in the week. In 1901 a twelve-hour day provision was added. The act was later consolidated with the Factories Act. In 1899 Manitoba made similar provision and British Columbia in 1901 by an amendment to the Shops Regulation Act. Each of these laws authorized the inspector to permit longer hours. All the provinces except Prince Edward Island have enacted legislation permitting municipal councils to pass by-laws requiring the closing of stores at hours specified in such by-laws, the provincial laws indi-

cating the general limits. Such by-laws could be passed only on receipt of petitions from the shopkeepers affected. Ontario and Manitoba began this type of legislation in 1888. Ontario (1895) has established a ten-hour day and sixty-hour week for employees on street railways, and in Nova Scotia (1913), while the daily hours are limited to ten, the employees may be required to work six consecutive hours on Sunday. Quebec has prohibited the employment of persons in hotel offices for more than twelve consecutive hours in twenty-four. Ontario (1921), British Columbia (1923) and Alberta (1924) have limited the hours of fire-department employees, and Ontario (1923) has prohibited the employment of chauffeurs on public vehicles for more than ten hours in twenty-four. There is no legal regulation of hours in fishing and navigation. None of the provinces have regulated night employment of workmen in bakeries.

In the United Kingdom the legal eight-hour day has been confined to the mining of coal, stratified limestone, shale and fire-clay but the eight-hour day is the general practice. The United States [1] has given the eight-hour day a larger legal recognition than either the United Kingdom or Canada. Eighteen states and the federal government limit the hours on public works to eight in the day, and eight states and the federal government limit the daily hours of manual workers on state work to eight. Nine states and the federal government restrict the daily hours on material contracts for the state to eight. Eight states and two territories have laws that give the eight-hour day to apparently all state employees. Four states have eight-hour laws for various classes of employees in state institutions. Massachusetts and the federal government have eight-hour laws for public printing. The basic eight-hour day for the calculation of

[1] Commons and Andrews, *Principles of Labor Legislation*, pp. 251 *et seq.*

wages, with extra pay for overtime, has been established on public work by five states and the federal government. Five other states have the basic eight-hour law for certain occupations and an eight-hour federal law applies to letter-carriers. Sixteen states have eight-hour laws for hazardous occupations, such as mining and quarrying. Nine states and Alaska have this legislation for refining and smelting of metals. Two states limit the hours of railway employees controlling the movement of trains to eight in the day, and one state and the federal government have the eight-hour day on irrigation works. The territory of Alaska passed an all-inclusive eight-hour day law, and although it was approved by popular vote, it was declared unconstitutional by an Alaskan court.

# CHAPTER VIII

## A Weekly Rest of at Least Twenty-four Hours

"The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable." (Treaty of Peace: Article 427, 5.)

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Wherever possible in industrial and commercial establishments the whole of the staff should be granted the rest period simultaneously. The rest period may be suspended or diminished after consultation with employers and workers' organizations, all such exceptions to involve compensatory rest in as far as possible and to be reported, with reasons, to the International Labor Organization (1921 convention and recommendation).

Legislation in Canada on the subject of a weekly rest falls into three main groups: first, the provincial Sunday observance laws and the Dominion Lord's Day Act; second, the provincial laws prohibiting the operation of electric railways on Sunday; and third, the British Columbia act establishing a weekly half-holiday for shop employees and the provincial early-closing laws authorizing municipalities to pass by-laws requiring retail stores to close for a weekly half-holiday. In addition to these three main groups of laws some of the provinces have legislation providing a weekly twenty-four-hour rest for employees of fire departments, hotels and restaurants, bakeshops and barber shops.

The early Sunday observance laws had their rise in Sabbatarianism rather than in any desire to save the worker from constant toil. The first law of the kind was passed in Nova Scotia in 1758 (c. 32) "in order that all persons may, on the Lord's Day, apply themselves to duties of religion

and piety, both publickly and privately." Similarly in Prince Edward Island the first legislation on the subject, in 1780 (c. 3), was "An act for the due observance of the Lord's Day," which, according to the preamble, "has been hitherto much neglected, and many abuses of the same have been committed, to the manifest prejudice and dishonor of religion and the shameful violation of public decorum and good order." A New Brunswick law of the same character was passed in 1786 (c. 5)—"An act against the profanation of the Lord's Day, commonly called Sunday, and for the suppression of immorality."

### SUNDAY OBSERVANCE LAWS

#### *Canada*

Early in the history of the Trades and Labor Congress there were evidences of a desire for a Dominion Lord's Day Act. The first resolution of the Trades and Labor Congress on the subject of Sunday observance was passed in 1888:

> That as it has been represented to this Congress that laws against Sabbath desecration in the Dominion are being flagrantly violated and ignored by more than one railway company, it be an instruction to the executive committee of this body to take such steps as may be considered advisable in bringing the subject under the notice of the Government, with the object of securing a remedy.[1]

In 1890 it was resolved—"That this Congress request the Government to pass a Sunday observance law, compelling all employers of labor to close their factories and workshops during the twenty-four hours constituting the Sabbath, excepting in cases of absolutely needed repairs."[2] In 1897 it

[1] *Trades and Labor Congress*, 1888, p. 27.

[2] *Ibid.*, 1890, p. 31.

was resolved "that in the opinion of this Congress there is no necessity for Sunday work," [1] and by a resolution of 1899 it was decided that all organizations of the Congress should "cooperate with any and all associations for legislation for one day's rest in seven." [2] In 1901 a standing committee was appointed to act in conjunction with the Lord's Day Alliance "in maintaining and securing the due and full observance of the Seventh rest-day in Canada" [3] and the records give other evidence of a working agreement between the Trades and Labor Congress and the Lord's Day Alliance at this time.[4] After the judgment of the Privy Council in 1903 [5] declaring the Ontario Sunday observance law *ultra vires,* effort was directed towards the enactment of a federal law.

At the 1906 session of the Dominion House a bill entitled "An act respecting the Lord's Day" was introduced and referred to a select committee.[6] This measure, which proposed that no employee should be permitted to work on Sunday unless he were given 24 consecutive hours' rest during the week, met determined opposition from transportation and manufacturing interests. The Canadian Manufacturers' Association considered the bill as originally drafted quite objectionable and a number of amendments were proposed and accepted.[7] The case in favor of the bill was well presented by Dr. J. G. Shearer, at that time secre-

[1] *Trades and Labor Congress,* 1897, p. 28.

[2] *Ibid.,* 1899, p. 19.

[3] *Ibid.,* 1901, p. 82.

[4] *Ibid.,* 1901, p. 74; 1902, p. 67; 1903, pp. 36, 67; 1904, p. 30.

[5] *Cf. infra,* p. 281.

[6] *Cf. Report of Select Committee to which was referred Bill No. 12 respecting the Lord's Day (1906).*

[7] *Industrial Canada,* 1906, p. 213.

tary of the Lord's Day Alliance, and it became law (c. 27) at the same session.

The Dominion Lord's Day Act has not been entirely satisfactory to the trade unions. They have objected to the clause requiring that the consent of the attorney-general of the province must be secured before action can be taken against any offender and they feel that many break the law with impunity.[1] There have been complaints from the workers in continuous industries and in various pursuits to which the law does not apply.[2] On the other hand, objection has been taken to the section making it illegal for transportation companies to carry passengers for pleasure on Sunday, "thus denying to the working class the privilege of pleasure and health seeking which are available and taken advantage of to a general degree by those fortunate enough to own automobiles."[3] The Congress prepared an amendment[4] to the act providing that the work of musicians in churches, church parades, funerals, etc., and of cooks and waiters in hotels and restaurants should be exempt from its provisions, but the proposed amendment was not accepted. In this matter the Congress seems to have been inconsistent, for at the conventions of 1912 and 1915 resolutions favoring one day of rest in seven for hotel and restaurant employees were adopted.[5] The repeal of the act and the substitution of a measure applicable to all workers was favored in a resolution passed at the 1920 Congress.[6]

In 1916 the Canadian Manufacturers' Association made application to the Minister of Justice for an order-in-council

[1] *Trades and Labor Congress*, 1910, p. 45; 1911, p. 33; 1920, p. 189.

[2] *Ibid.*, 1909, p. 80; 1911, p. 73; 1912, p. 114; 1915, p. 68; 1916, p. 104.

[3] *Ibid.*, 1916, p. 136.

[4] *Ibid.*, 1912, p. 62; 1913, p. 59.

[5] *Ibid.*, 1912, p. 114; 1915, p. 68.

[6] *Ibid.*, 1920, p. 189.

to suspend the Lord's Day Act as applied to certain industries for the period of the war, although the manufacturers do not seem to have been unanimous in the matter.[1] The request was not granted and the law has not been altered since its enactment.

As the Dominion Lord's Day Act is the chief guarantee of a weekly rest to the workers of Canada, the main provisions are here reproduced.

The "Lord's Day" is defined as meaning the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon. In general, no sales are to be made or ordinary business transacted, and no persons employed on Sundays, but works of necessity and mercy are permitted. An extended definition of the term "works of necessity or mercy" is accordingly set forth in the act, the following classes of work being included as such:

(a) Any necessary or customary work in connection with divine worship;

(b) Work for the relief of sickness and suffering, including the sale of drugs, medicines and surgical appliances by retail;

(c) Receiving, transmitting, or delivering telegraph or telephone messages;

(d) Starting or maintaining fires, making repairs to furnaces and repairs in cases of emergency, and doing any other work, when such fires, repairs or work are essential to any industry or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry, or its product, or to the plant or property used in such process;

(e) Starting or maintaining fires, and ventilating, pumping out and inspecting mines, when any such work is essential to the protection of property, life or health;

(f) Any work without the doing of which on the Lord's

[1] *Industrial Canada*, July, 1916, p. 381.

Day, electric current, light, heat, cold air, water or gas cannot be continously supplied for lawful purposes;

(g) The conveying of travellers and work incidental thereto;

(h) The continuance to their destination of trains and vessels in transit when the Lord's Day begins, and work incidental thereto;

(i) Loading and unloading merchandise, at intermediate points, on or from passenger boats or passenger trains;

(j) Keeping railway tracks clear of snow or ice, making repairs in cases of emergency, or doing any other work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day;

(k) Work before six o'clock in the forenoon and after eight o'clock in the afternoon of yard crews in handling cars in railway yards;

(l) Loading, unloading and operating any ocean-going vessel which otherwise would be unduly delayed after her scheduled time of sailing, or any vessel which would be otherwise in imminent danger of being stopped by the closing of navigation; or loading or unloading before seven o'clock in the morning or after eight o'clock in the afternoon any grain, coal or ore carrying vessel after the fifteenth of September;

(m) The caring for milk, cheese, and live animals, and the unloading of and caring for perishable products and live animals, arriving at any point during the Lord's Day;

(n) The operation of any toll or drawbridge, or any ferry or boat authorized by competent authority to carry passengers on the Lord's Day;

(o) The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act;

(p) Any unavoidable work after six o'clock in the afternoon of the Lord's Day, in the preparation of the regular Monday morning edition of a daily newspaper;

(q) The conveying of His Majesty's mails and work incidental thereto;

(r) The delivery of milk for domestic use, and the work of domestic servants and watchmen;

(s) The operation by any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch which is, on the day of the coming into force of this Act regularly so operated;

(t) Work done by any person in the public service of His Majesty while acting therein under any regulation or direction of any department of the Government;

(u) Any unavoidable work by fishermen after six o'clock in the afternoon of the Lord's Day, in the taking of fish;

(v) All operations connected with the making of maple sugar and maple syrup in the maple grove;

(w) Any unavoidable work on the Lord's Day to save property in cases of emergency, or where such property is in imminent danger of destruction or serious injury;

(x) Any work which the Board of Railway Commissioners for Canada, having regard to the object of this Act, and with the object of preventing undue delay, deems necessary to permit in connection with the freight traffic of any railway.

In addition to the above, it is provided that except in cases of emergency no employee engaged in the receiving, transmitting or delivering of telegraph or telephone messages, or in connection with transportation or in the work of any industrial process, should be required to work on Sunday unless allowed twenty-four consecutive hours without labor during the next six days. This section does not apply to employees in industrial occupations in which the regular day's labor is not of more than eight hours' duration. Games and performances where an admission fee is charged are forbidden, as are also charges for conveyances to performances where the charge may be deemed an indirect payment of a fee. Excursions run for amusment or pleasure, for which a charge is made, are also forbidden, except where

allowed by a provincial act. Penalties are provided for violations of the act. Provincial Lord's Day acts are stated not to be affected by the measure, and prosecutions may be brought either under Dominion or provincial legislation. But a prosecution under the Dominion act may not be begun without the consent of the attorney-general of the province in which the alleged offense was committed or after sixty days from the time of commission.

The policy of the Dominion Government with reference to a weekly day of rest for its employees was set forth in an order-in-council (P. C. 1537), adopted September 7, 1925. This order-in-council provided:

1. That no employee of the Dominion Government should be required to work on Sunday except in circumstances of emergency or necessity.

2. That in the case of any such employee who by reason of emergency or necessity is required to work on Sunday, he shall be allowed, in substitution, during the next six days of such work, a compensatory period of rest of twenty-four consecutive hours.

3. That no exceptions to the foregoing principle shall be allowed except by departmental authority, and then only in cases where there may be no substitute help available to perform the duties which are involved.

### *Nova Scotia*

The first law for the prohibition of Sunday labor in any part of the territory now within the boundaries of Canada is a Nova Scotia statute of 1758 (c. 32)—"An act for the better observation and keeping of the Lord's Day." This law required " in order that all Persons may on the Lord's Day apply themselves to Duties of Religion and Piety both publickly and privately " that goods should not be offered for sale, " Provided, nevertheless, that this Act shall not ex-

tend to prohibit any Persons from selling or exposing to sale, Milk and fresh-Fish before the Hour of nine of the Clock in the Morning and after five of the Clock in the Afternoon, on the said Day." The citizens were forbidden, under pain of a fine of ten shillings, "to do or exercise any Labour, Work or Business of his or their ordinary Callings or other worldly Labour or suffer the same to be done by his or their Servant or Servants, Child or Children, either by Land or by Water (Works of Necessity and Charity only excepted) or use, or suffer to be used any Sport, Game, Play or Pastime on the Lord's Day or any part thereof." It was also stated that persons in health and above the age of twelve years, if absent "Three Months together from Publick Worship on the Lord's Day" should be fined five shillings.

In the first revision of the Nova Scotia statutes in 1851 this law (c. 157) appeared in somewhat simpler form under the title "Of offences against religion." By an amending act of 1889 (c. 57) it was made to apply to employers as well as employed and to bodies corporate as well as individuals, and heavier penalties for infraction of the law were provided. Two new sections were added in 1891 (c. 32). By this amendment any person or body corporate who employed any one to perform servile labor on Sunday or who permitted employees to work on Sunday would be guilty of performing servile labor on Sunday within the meaning of the act and penalties were provided for such offences.

A few years later the power of the provincial legislature to alter or amend this legislation was called in question. In The Queen *v.* Halifax Electric Tramway Co.[1] the defendant company was charged with violating this law by employing motormen to operate cars on Sunday. It was held that as Chapter 159 of the Revised Statutes of 1864 was part of

[1] 30 N. S. R. 469.

the criminal law of Canada the legislature of the province had no power to alter or amend any of its provisions and that any legislation, such as Chapter 32 of the Acts of 1891, purporting to have that effect, was *ultra vires*. After this judgment the act dealing with offences against religion (R. S. 1864, c. 159) and the amending laws were not consolidated at the next revision of the Nova Scotia statutes in 1900 but were printed in the appendix under the title "Sunday Desecration."

### *Prince Edward Island*

The first legislation in Prince Edward Island with respect to Sunday labor was passed in 1780 (c. 3)—"An Act for the Due Observance of the Lord's Day." This law is substantially the same as the earlier statute of Nova Scotia. An amendment of 1868 (c. 14) forbade the sale of fresh fish on Sunday, permitted by the original act. No other legislation on this subject has been enacted in Prince Edward Island, except that the penalties were increased in 1892 (c. 29).

### *New Brunswick*

Workers in New Brunswick were assured of a weekly rest by "An act against the profanation of the Lord's Day, commonly called Sunday, and for the suppression of immorality," passed in 1786 (c. 5), of the same general character as the earlier legislation of Nova Scotia and Prince Edward Island. By a law of 1831 (c. 38) this legislation was repealed as being "insufficient for the purposes intended." The repealing act provided that any person convicted of "shooting, gaming . . . . or of servile labour (works of necessity and mercy excepted)" on Sunday should be fined not less than five shillings nor more than twenty shillings, and in default of payment should be committed to the common gaol for not less than twelve hours nor more

than four days, at the discretion of the justice. An act consolidating the criminal law of the province in 1849 (c. 29) increased the maximum fine to forty shillings.

A law supplementing this legislation, entitled "An act to prevent the profanation of the Lord's Day," was passed in 1899 (c. 11). This law forbade any person to "do or exercise any worldly labour, business, or work of his ordinary calling" except certain works of necessity and charity. The act applied to corporations as well as individuals. A long list of exemptions, from the delivery of milk and ice to the moving of through freight trains, was included. Ontario legislation of a similar character was declared *ultra vires* by the Privy Council in 1903.[1]

As criminal law, which includes offences against religion, was assigned to the Dominion jurisdiction at Confederation, these laws were not included in the Consolidated Acts of 1903 but were printed in the appendix under the heading, "Such unrepealed acts and parts of acts as the commissioners recommend to be printed therein."

*Quebec*

As early as 1805, when Quebec was Lower Canada, an act (c. 10) was passed forbidding "such immoral and irreligious practices" as the selling of merchandise on Sunday, or strong liquors except to sick persons and travelers. The law did not prevent "selling at the Church doors of the Country Parishes the Usufruit or Produce of the Estates of Minors, Absentees, or persons who are interdicted, or the effects arising from public gatherings for the benefit of Churches or those destined for pious purposes."

In 1851 (c. 100) another law on this subject was passed—"An act to make better provision for granting licenses to keepers of taverns and dealers in spirituous liquors in Lower

[1] *Cf. infra*, p. 281.

Canada and for the more effectual repression of intemperance." The provisions of this measure with regard to the sale of liquors on Sunday (s. 12) showed no departure from the law of 1805. In the Consolidated Statutes for Lower Canada, 1861 (c. 23) the foregoing laws were consolidated in "An act respecting the sale of goods on Sundays."

The last enactment on this subject is a law passed in 1907 (c. 42) in view of the coming into effect of the Dominion Lord's Day Act. It reaffirmed the provincial legislation in force on February 27, 1907, when the Dominion law became effective, and specifically permitted the performance on Sunday of any act not forbidden by law previous to that date. It was provided that no one, except in cases of necessity, should carry on industrial work or pursue any business or calling, or give or organize theatrical performances or excursions where intoxicating liquors were sold on Sunday for gain, or take part in, or be present at, such theatrical performance or excursion. This law also stipulated that its provisions should not restrict the privileges granted or recognized by the Dominion Lord's Day Act of 1906.

A clause to permit Jews to work on Sunday was inserted as follows:

> Notwithstanding anything contained in this act, whosoever conscientiously and habitually observes the seventh day of the week as the Sabbath day, and actually abstains from work on that day, shall not be punishable for having worked on the first day of the week, if such work do not disturb other persons in the observance of the first day of the week as a holy day, and if the place where such work is done is not open for trade on that day.

Jewish citizens of Montreal failed in an effort to have a similar provision inserted in the Dominion Lord's Day Act when the bill was before a select committee of the House in

1906.[1] The proposed exemption was opposed by the Lord's Day Alliance and the Trades and Labor Congress.[2]

*Ontario*

The first legislation in Ontario which made provision for a weekly rest was a law of Upper Canada, passed in 1845 (c. 45)—"An act to prevent the profanation of the Lord's Day, commonly called Sunday, in Upper Canada." It was made unlawful for any merchant, tradesman, artificer, mechanic, workman, laborer, or other person whatsoever on the Lord's Day to sell goods or to do or exercise any worldly labor, business or work of his ordinary calling. The conveying of travelers or Her Majesty's mail by land or by water, selling drugs and medicines and other work of necessity and works of charity only were excepted. By an amendment of 1896 (c. 62) farmers were included among those forbidden to exercise their calling on the Lord's Day.

In 1895 action was brought against the Hamilton Street Railway Company for an injunction to restrain them from operating cars on Sunday, but it was held that the work of the company was not within the terms of the act of 1845, and that assuming the act did apply, it had not been shown that the Sunday cars were not conveying travelers as permitted by the exception in the law.[3] An appeal was taken in 1897 but the judgment was affirmed, it being held that the defendants were not within the meaning of the words "or other person whatsoever" in the section given above outlining the kinds of work to be considered unlawful under the act.

In view of this decision, the law was amended in 1897 (c. 14, s. 95) to bring street railways definitely within its

[1] *Report of Select Committee on Bill No. 12 respecting the Lord's Day*, p. 182.

[2] *Trades and Labor Congress*, 1906, pp. 42, 56.

[3] 27 O. L. R. 49.

scope. It was provided that "no street car company, or tramway company, or any electric railway company except where it is necessary for the purpose of keeping the track clear of snow or ice or for other acts of necessity or charity shall run cars or trams upon the Lord's Day." Companies which had before April 1, 1897, regularly operated cars on Sunday were exempted from this amendment. It was also stated that this clause should not affect any provisions of the Electric Railway Act. In the Revised Statutes of 1897 the amendment was consolidated with the preceding legislation on the subject as Chapter 246. An appeal from the Court of Appeal for Ontario was taken to the Privy Council, and in a judgment in 1903 it was held that the law treated as a whole was *ultra vires* of the Ontario Legislature on the ground that criminal law was reserved by the British North America Act for the exclusive authority of the Dominion Parliament.[1]

*British Columbia*

The only British Columbia legislation on Sunday observance is a law of the formerly separate colony of British Columbia, now Vancouver Island, which applies only to that portion of the province. This law was really a proclamation of the governor of British Columbia in 1863, declaring that the Sunday observance laws in force in England in 1858 were to be in force in the colony. The English statutes applied to Vancouver Island in this way were listed in a schedule appended to the act. The first of these, a law of 1625 (1 Car. 1, c. 1) — "An act for punishing divers abuses committed on the Lord's Day, called Sunday," set forth that the keeping of the Lord's Day was "profaned and neglected by a disorderly sort of people in exercising and frequenting bear-baiting, bull-baiting, interludes, common plays and other unlawful exercises and pastimes." These practices were forbidden on the Lord's Day and

[1] C. R. [13] A. C. 201.

offenders were to forfeit 3*s.* 4*d.* to the poor of the parish for every offence.

The schedule also included a law of 1627 (3 Car. 1, c. 1) —"An act for the further reformation of sundry abuses committed on the Lord's Day, commonly called Sunday"—which provided that carriers, waggonmen, etc., should not travel on the Lord's Day upon pain of a fine of twenty shillings, and that butchers who killed or sold victuals upon that day should forfeit 6*s.* 8*d.*

Another of the English laws, a statute of 1676 (29 Car. 2, c. 7)—"An act for the better observation of the Lord's Day, commonly called Sunday"—forbade the carrying on of any "worldly labour, business or work" or the crying or exposing of goods for sale on Sunday. Drovers, horse-coursers, waggoners, etc., were forbidden to travel on that day, and the use of boats or barges on Sunday was prohibited unless permission were granted by a justice of the peace. Provision was made for the dressing and selling of meat in inns and for "the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon."

Section 3 of a law of 1831—"An act to amend the laws in England relative to game" (1 & 2 W. 4, c. 32)—was also adopted for the colony. This section imposed a penalty of five pounds and the costs of conviction upon persons who "kill or take any game, or use any dog, gun, net or other engine or instrument for the purpose of killing or taking any game on a Sunday or Christmas Day." An act of 1850 (13 & 14 Vic., c. 23) was also adopted. This statute repealed a provision of an early law (27 Hen. 6, s. 5) which excepted the four Sundays in harvest from the general rule that all fairs and markets should cease on Sunday.

This Sunday Observance Act, with the schedule of the English acts, has been included in each revision of the statutes.

*Manitoba*

By the Municipal Act of Manitoba, passed in 1886 (c. 52, s. 347, ss. 37), the councils of cities, towns, villages and rural municipalities were empowered to pass by-laws "for preventing vice, drunkenness, profane swearing . . . and preventing persons carrying on their ordinary trades, callings or occupations on Sunday, and the violation of the Sabbath day." The part of this provision which read "and preventing persons . . . Sabbath Day," was repealed by the Lord's Day Act of Manitoba, passed in 1898 (c. 27), a measure practically identical with an ordinance of the Northwest Territories (1883, no. 6)—"An act to prevent profanation of the Lord's Day." This ordinance forbade any "merchant, tradesman, artificer, mechanic, workman, labourer or other person whatsoever" to buy or sell on Sunday or to engage in labor of any kind except works of necessity and charity. Barbers were forbidden to exercise their calling on Sunday by an amendment of 1900 (c. 24).

A law of 1923 (c. 25) made it legal, despite any provincial legislation to the contrary, to conduct passenger excursions for hire on Sundays to summer resorts, beaches or camping grounds within the province. The Lord's Day Alliance challenged this 1923 act. The Superior Court of Manitoba upheld its validity and an appeal was then taken by the Alliance to the Privy Council.[1] The appeal was dismissed by the Privy Council on December 22, 1925. It was held that:

> Some things on that day were everywhere permitted; others were everywhere allowed. But there was an intermediate class of activities — Sunday excursions being among them — with reference to which the Act recognized that different views might prevail in the provinces, so varying were the circumstances, usages, and predominant religious beliefs of the people. The

[1] [1925] A. C. 384.

Act proceeded to provide accordingly, that, with reference to these matters, provincial views should, within a province, prevail.

*Saskatchewan*

Legislation in the Prairie Provinces for the regulation of Sunday labor began with an ordinance of the Northwest Territories, passed in 1883 (no. 6), "An act to prevent the profanation of the Lord's Day," which forbade Sunday labor of any kind except works of necessity and charity. The measure remained in force in Saskatchewan until repealed in 1920 (c. 3).

*Alberta*

The ordinance of the Northwest Territories for the enforcement of Sunday observance (1883, no. 6) applied in Alberta as in Saskatchewan. There has been no repealing act in Alberta and the revision of 1922 prints as Chapter 154 this Northwest Territories ordinance under the title "The Lord's Day Act of Alberta."

*Yukon Territory*

The ordinance of the Northwest Territories referred to as having a part in the Sunday observance legislation of the provinces of Manitoba, Saskatchewan and Alberta, was taken into the Consolidated Ordinances of the Yukon in 1902 as Chapter 78. This chapter is not included in the next consolidation of the Yukon Ordinances in 1914 but it appears in the schedule of ordinances left unrepealed and not replaced by an ordinance in the Consolidated Ordinances. Apparently the ordinance is regarded as having been superseded by the Dominion Lord's Day Act of 1906.

WEEKLY REST FOR RAILWAY EMPLOYEES

*Canada*

The Railway Act of the Dominion Parliament (1903, c. 58) required that any railway authorized by a special act of

a provincial legislature, if declared by the Dominion Parliament to be a work for the general advantage of Canada, should be governed by the Dominion Act to the exclusion of any provisions of the special act of the province inconsistent with the Dominion railway legislation and in lieu of any general railway act of the province. By an amendment, 1904 (c. 32), it was provided that every person employed on railways and on steam or electric street railways " situate wholly within one province of Canada, and declared by the Parliament of Canada to be either wholly or in part a work for the general advantage of Canada," should be subject to any legislation of the province in which the railway was situated in force on August 10, 1904, " prohibiting or regulating work, business or labour upon the first day of the week, commonly called Sunday." This amendment also ratified all such provincial legislation in its application to roads of this character and authorized the Governor in Council to confirm by proclamation any provincial legislation of this kind enacted after August 10, 1904. By way of exemption the amendment stated that these provisions did not apply to any railway or part of a railway: (a) which formed part of a continuous route or system operated between two or more provinces or between any province and a foreign country so as to interfere with or affect through traffic thereon; or (b) between any of the parts of the Great Lakes and such continuous route or system so as to interfere or affect through traffic thereon; or (c) which the Governor in Council by proclamation declares to be exempt from the provisions of this section. The consolidating Railway Act of 1919, first session, (c. 68, s. 456) contained the same provisions.

*Ontario*

Legislation prohibiting the operation of street cars on Sunday first appeared in the Ontario statutes as an amend-

ment to the Electric Railway Act in 1895 (c. 38), which, with some exceptions, forbade companies within the terms of the act to operate cars on Sunday. A company operating a railway extending more than one and a half miles from a city was permitted to run cars into the city before 10 a. m. and out of the city after 5 p. m. for the transportation of milk. The transportation of freight and passengers on such cars was forbidden and it was made unlawful for the company to collect any fare or toll for the transportation of any freight other than milk. The running of empty cars from the sheds to any point on the line for the receiving of milk or back to the car sheds after its delivery, was permitted. Penalties were imposed and it was stated that the person in charge of any street car operated in violation of this legislation would be liable to the penalties imposed in "An act to prevent the profanation of the Lord's Day."

When the Privy Council held in 1903 that "An act to prevent the profanation of the Lord's Day," which forbade the operation of street cars on Sunday, was *ultra vires* of the Ontario Legislature,[1] the province achieved the end desired through its authority over property and civil rights. The legislature inserted a section in the Statute Law Amendment Act of 1904 (c. 10, s. 79) which provided that companies or municipal corporations operating street railways, tramways or electric railways subject to the jurisdiction of the province should not employ any person on Sunday except for the purpose of keeping the track clear of snow and ice or for other work of necessity. This legislation did not apply to railways already having the right to operate on Sunday.

In 1906 the separate acts respecting steam, electric and street railways were consolidated in the Ontario Railway

[1] *Cf. supra*, p. 281.

Act (c. 30) which incorporated this previous legislation. An amendment to this act in 1909 (c. 68) permitted the operation of a street railway on Sunday within a city having a population of over 50,000 if the electors approved on the question being submitted to them at the annual municipal election. The unions then urged that Sunday work for street-railway employees should be limited to eight hours,[1] and although this was not granted, street-railway employees were assured of a weekly rest by an amendment to the Ontario Railway and Municipal Board Act in 1912 (c. 37) which forbade their employment for more than six days of ten hours each in any one week.

In 1914 (c. 21) it was stated that the section restricting operation on Sunday to works of necessity should not apply to the corporation of the City of London or the London Railway Commission in the operation of the London and Port Stanley Railway. This exemption was extended to the London Street Railway Company in the operation of part of its line by an amendment contained in the Statute Law Amendment Act of 1917 (c. 27, s. 31). A further exemption in 1919 (c. 44) was granted to this company for another part of its line.

By an amendment to the Railway Act passed in 1920 (c. 56), on motion of Mr. Thomas Tooms, Labor member for Peterboro, the provision that any city with a population of 50,000 could permit Sunday operation of street cars by vote of the electors was extended to any city with a population of 15,000.

### *Manitoba*

A by-law of the city of Winnipeg in 1892 (no. 543) prohibited the running of Sunday street cars until approved by the city council. The Winnipeg City Charter in 1902

[1] *Trades and Labor Congress*, 1910, p. 24.

(c. 77) stated that the city council should not permit the operation of street cars on Sunday unless a by-law to that effect were approved by the electors. In 1895 (c. 33) an amendment to the Municipal Act forbade the operation of street cars on Sunday in any municipality under penalties which could be recovered from the person or firm operating the street railway and also severally from the employees engaged in operating street cars in contravention of the law. This amendment was consolidated with the Lord's Day Act in the Revised Statutes of 1902 (c. 102), but in 1906 (c. 39) it was repealed and with a few verbal changes was again written into the Municipal Act (c. 51, s. 767). At the same time it was stated that this provision should not apply to the city of Winnipeg but that the regulations of the city charter with regard to Sunday street cars should govern. It was also provided that it should not apply in any other incorporated city or town if the electors voted in favor of a Sunday street-car service. In 1915 (c. 80) exemption from the provisions of the Municipal Act forbidding the operation of street cars on Sunday was granted to the town of Stonewall and the rural municipality of Rockwood. In 1923 (c. 25) Sunday excursions were legalized.[1]

### *Nova Scotia*

The first Nova Scotia legislation with reference to the operation of street cars on Sunday was an addition made in 1907 (c. 47) to the clause in the Municipal Act (R. S. 1900, c. 70, s. 134, ss. 45) which authorized municipal councils to enact by-laws "preventing the profanation of the Sabbath." This amendment permitted them to regulate "the running of street cars on Sabbath." In the same session by an amendment to the Town Act (c. 56) similar authority was conferred on town councils. In the consolidating acts for

[1] *Cf. supra*, p. 283.

municipalities (c. 3) and towns (c. 4) passed in 1918 this authority was withdrawn.

A bill providing for one day of rest in seven for street railway employees was introduced in the Nova Scotia Legislature in 1910 but it was not strongly supported. The provincial executive of the Trades and Labor Congress reported that the non-union employees on the Halifax street railway opposed the bill so that they might work seven days in the week.[1]

The Sunday work-day for street railway employees was limited to six consecutive hours by an amendment of 1913 (c. 52) to the Street Railway Act, a law which applied only to the Halifax Electric Tramway Company. Longer hours were permitted if the men were required to operate sweepers or snow-plows, or to complete a run.

In 1917 (c. 53) another amendment to the Street Railway Act empowered the Board of Commissioners of Public Utilities to make regulations limiting the number of days in every eight during which street railway employees could be required to work, notwithstanding the provisions of any agreement respecting hours of labor between the company and its employees.

### *Alberta*

The Railway Act of Alberta (1907, c. 8, s. 241) forbade under penalty any railway company or municipal corporation to employ street railway workers on Sunday except for the purpose of keeping the track clear of snow or ice or for other work of necessity. An amendment of 1909 (c. 4, s. 16) stated that this requirement should cease to apply to street railways operated within the municipal limits of the cities of Calgary, Edmonton and Strathcona, if on a plebicite vote the ratepayers should favor Sunday street cars.

[1] *Trades and Labor Congress*, 1910, p. 29.

### *Saskatchewan*

Saskatchewan followed the example of Alberta in prohibiting the operation of street railways on Sunday and in authorizing municipalities not to enforce the prohibition. By an amendment to the Railway Act of Saskatchewan passed at the session of 1910-11 (c. 41, s. 236) street railway employees could not be required to work on Sunday except for the purpose of keeping the tracks clear of snow or ice or for other work of necessity. City councils were authorized by an amendment to the City Act, also passed at the 1910-11 session (c. 18), to pass a by-law declaring that this provision should cease to apply to the operation of any street railway within the city. This power was extended to rural municipalities in 1914 (c. 15, s. 21) and to town councils in 1915 (c. 17, s. 15).

### *British Columbia*

In 1916 (c. 52) the British Columbia Legislature by an amendment to the Railway Act of the province authorized the Lieutenant-Governor in Council to make regulations limiting the number of days' work in a week for street railway employees. The year before the Vancouver Local of the Amalgamated Association of Street and Electric Railway Employees of America presented the following resolution at the annual meeting of the Trades and Labor Congress:

> Resolved—that all street and electric railway men operating cars in this province should have twenty-four consecutive hours off duty in every seven days; and, if approved of by the delegates at this convention, that it be further resolved—that this resolution be put before the government to try and have them pass a law for that purpose.[1]

[1] *Trades and Labor Congress*, 1915, p. 87.

## WEEKLY REST FOR SHOP EMPLOYEES

### *British Columbia*

In British Columbia employees in wholesale and retail business establishments have a weekly rest of more than twenty-four hours. In 1916 the province established a weekly half-holiday for shop employees, while the provinces of New Brunswick, Alberta, Saskatchewan, Manitoba and Ontario have laws authorizing municipalities to pass by-laws on the subject. The legislation in British Columbia was permissive in character also until the Weekly Half-Holiday Act was passed. By the sections on early closing in the Shops' Regulation Act—Chapter 34 of 1900—if a half-holiday on any day of the week were provided for in the early-closing by-law of a municipality, the time fixed for closing might be noon on that day. In 1902 (c. 59) the wording of the act was changed so that this provision applied to "any one or more half-holidays in any one week." A further amendment in 1907 (c. 35) stated that notwithstanding any legislation to the contrary it would be lawful for a municipality to enact a by-law providing for one or more half-holidays in any week. There was no further change until 1916 (c. 75), when the special act was passed after some pressure from the retail clerks' organizations in the cities of the province, assisted by the British Columbia Federation of Labor.[1]

The act defined a shop as "any premises where any wholesale or retail trade or business" was carried on and provided that after July 1, 1916, every shop should close not later than 1 p. m. on one day of the week. Certain classes of shops listed in a schedule were exempt from the provisions of the act—bakeries, barber shops, cigar stands, drug stores, newspaper stands, restaurants; shops or stands

[1] *Ibid.*, 1916, p. 75.

for the sale of fresh fruit, vegetables, soft drinks, cut flowers, and dairy products, confectioners' shops and such other trades and businesses as may be declared exempt by order-in-council published in the *Gazette*. The law required that a referendum vote should be taken in the municipalities as to the day of the week on which the half-holiday should be observed. Unorganized districts were not included in the provisions of the act but the Lieutenant-Governor in Council was empowered to name a day on which shop employees in unorganized territory should observe the half-holiday. The law stated that if Saturday were decided upon for the half-holiday, shops might be kept open until 9:30 p. m. on Friday night.

Under an amendment of 1918 (c. 99) it was made unnecessary to observe the half-holiday during the seven days preceding Christmas or the half-holiday falling nearest any public holiday. In 1919 (c. 91) municipal councils were authorized to bring within the scope of the act any class of shops exempted from the operation of the act. This amendment itself struck out "barber shops" from the list of shops exempted. By an amendment of 1920 (c. 103) all shops required to close for a weekly half-holiday must also close for the entire day on certain specified public holidays, and in 1921, second session, (c. 52), "any day appointed by proclamation and declared to be a public holiday" was added to the list of holidays.

*New Brunswick*

The Early Closing Act of New Brunswick, passed in 1911 (c. 15), authorized the council of any city or incorporated town, on receipt of a petition signed by two-thirds of the persons engaged in any particular line of business, to require by by-law that during the whole or any part of the year all shops should remain closed between 6 p. m. and 5

a. m. on each day of the week except Saturday. Provision was made that any shop closing at 1 p. m. on Saturday might be kept open to a later hour on Friday. The Early Closing Acts of 1917 (c. 33) and 1923 (c. 21) reenacted these provisions.

### *Alberta*

The Province of Alberta passed an Early Closing Act at the session of 1911-12 (c. 23), by which cities and towns with a population of not less than one thousand could pass by-laws requiring shops to close at any hour not earlier than 6 p. m., and on one specified day in the week at 12 noon or any later hour. By a law of 1918 (c. 4, s. 47) the Early Closing Act was applied to any city, town or village.

### *Saskatchewan*

In 1915 the trade unions asked the Saskatchewan Government for a weekly half-holiday for all shop employees,[1] and at the second session of 1917 (c. 25, s. 7) an amendment to the City Act authorized city councils to require any class of shops to be closed on any one day of the week after 12 o'clock noon or any later hour that might be deemed advisable. The same amending law authorized any city council to require by by-law that all shops should be closed on one day of the week after 12 o'clock noon or such later hour as might be deemed advisable on receipt of a petition therefor signed by not less than two-thirds of the occupiers of shops in the city. An amendment to the Town Act in 1916 (c. 19, s. 195) had authorized town councils to require shops to be closed on one day of the week between 1 p. m. and 5 a. m. of the following day. Village councils were given the same power by an amendment to the Village Act at the session of 1918-19 (c. 36, s. 9) of the legislature.

[1] *Trades and Labor Congress*, 1915, p. 22.

*Manitoba*

In 1920 (c. 124) the Manitoba Legislature passed an amendment to the Shops Regulation Act which gave authority to the municipal council or any rural municipality, in corporated village or town to pass a by-law requiring all or any class of shops to be closed on Thursday of each week from 12 o'clock noon to 6 p. m. during the whole or any part of the year. The same measure empowered city councils to pass by-laws requiring shops to be closed for the same hours but on such day or days in the week as the council might determine.

*Ontario*

In 1921 (c. 76) an amendment to the Factory, Shop and Office Building Act provided that if three-fourths of the occupiers of any class of shops should sign an application for a weekly half-holiday during all or certain periods of the year, the city or town council should pass a by-law giving effect to the request within one month after the presentation of the application. The provisions were enlarged in 1925 (c. 70) to extend to village councils as well as those of cities and towns.

BAKESHOPS AND BARBER SHOPS

*Ontario*

The Ontario Bake Shops Act (1896, c. 64) prohibited Sunday work for employees in bakeshops by fixing the limits of the weekly work period from midnight on Sunday night to midnight on the succeeding Saturday night. When the legislation with regard to bakeshops was incorporated in the act regulating shops (1897, c. 51) a section was added that no employer should require, permit or suffer any employee in any bakeshop to work on Sunday." The word "employee" in this clause was changed to "person" by

an amendment of 1901 (c. 36). When in turn this law was consolidated with the Factories Act in a new statute (1913, c. 60) the prohibition of Sunday labor was continued.

An amendment to the Shops Regulation Act in 1901 (c. 36) forbade the employment of workers in barber shops on Sunday. This amendment was found necessary when an action entered by the Barbers' Union in Hamilton was dismissed on the ground that the Shops Regulation Act did not apply to barber shops.[1] The provision was continued without change when the Shops Regulation Act was consolidated with the Factories Act in 1913.

### *British Columbia*

By an amendment of 1901 (c. 49) to the Shops Regulation Act of British Columbia the employment of workers in bakeshops on Sunday was prohibited except by written permission of the inspector, posted in a conspicuous place in the bakeshop. There has been no further enactment on this subject.

## HOTELS AND RESTAURANTS

### *Quebec*

In 1917 the Quebec executive committee of the Trades and Labor Congress asked the provincial government for legislation to ensure one day's rest in seven to all employees in hotels and restaurants,[2] and in 1918 (c. 53) the legislature passed "An act to provide for one day of rest for employees in certain industries." This act authorized the Lieutenant-Governor in Council to order that employees in hotels, restaurants and clubs should be given one day of rest each week and to make regulations for carrying out the act, determining to what establishments and in what manner it

[1] *Trades and Labor Congress*, 1901, p. 43.

[2] *Ibid.*, 1917, p. 55.

should apply and what persons should benefit. Regulations have been issued under authority of this law affecting employees doing manual labor in or about hotels, restaurants and clubs, including office employees and clerks but not waiters, bell-boys and porters. At least one day of rest each week was provided for cooks and other kitchen help and two afternoons of rest each week, making a total rest of not less than twenty-four hours, for all other female employees except waitresses. When the Quebec executive committee of the Trades and Labor Congress met the provincial cabinet in 1920 they urged that this legislation should be extended to all hotel help.[1] An amendment of 1925 (c. 54) made it clear that the day of rest should be a complete period of twenty-four hours.

*Ontario*

The Ontario Legislature in 1922 (c. 93), after the unions of chefs, cooks, waiters and hotel employees in the province had for several years urged legislation similar to that of Quebec,[2] passed the One Day's Rest in Seven Act, which granted employees of hotels, restaurants and cafes in cities and towns of 10,000 population and over twenty-four consecutive hours of rest in every seven days, to be granted on Sunday wherever possible. It was stated that nothing in the act authorized any work on Sunday then prohibited by law. The act did not apply to watchmen, janitors, superintendents or foremen, nor to other classes of employees where there were not more than two employees of such class, nor to workers not employed for more than five hours in any one day.

[1] *Trades and Labor Congress*, 1920, p. 116.

[2] *Ibid.*, 1917, p. 53; 1918, p. 39; 1920, p. 100.

FIRE DEPARTMENTS

*Ontario*

The province of Ontario in 1920 (c. 88), in response to the requests of the fire-fighters' unions,[1] passed a statute, effective January 1, 1921, which required that employees of fire departments should be off duty for a full day of twenty-four hours in every week. It was stipulated in this Fire Departments Hours of Labor Act that in any fire department operating under the double-platoon system the twenty-four hours release at the change of platoons should not be regarded as this day of rest. The double-platoon system was made compulsory for permanent fire departments in places of 10,000 and over, according to one of two plans as to hours of employment,[2] and was to work in conjunction with the provisions of the 1920 act.

*British Columbia*

A British Columbia law of 1923 (c. 14) provided that each officer and employee of the fire departments in Vancouver, Victoria, New Westminster, Point Grey and South Vancouver should be off duty for one full day of twenty-four hours in each week in addition to time off under the Fire Departments Two-Platoon Act of the same session (c. 15).[3]

*Alberta*

Alberta passed a similar law in 1924 (c. 37), the Fire Departments Hours of Labor Act, granting employees of permanent fire departments in cities, towns and villages one full day of twenty-four hours off duty in each week. A provision was inserted in the act that it should not apply in any city,

[1] *Trades and Labor Congress*, 1920, p. 104.

[2] *Cf. supra*, p. 264.

[3] *Ibid.*

town or village until a vote had been taken and assented to by a majority of the electors voting thereon at the next annual election of councillors. An amendment of 1925 (c. 26) required that a local by-law must first be submitted to a vote of the electors upon receipt of a petition signed by at least ten per cent of those who voted at the last preceding municipal election.

### SUMMARY

The Maritime Provinces passed Sunday observance laws in the late 1700's and legislation of this kind was adopted by Upper Canada in 1845 and the Northwest Territories in 1883. The Manitoba Legislature in 1886 empowered the municipalities to pass by-laws with respect to Sunday observance but this was repealed in 1898 and "An act to prevent profanation of the Lord's Day" was substituted. The only Sunday observance legislation of British Columbia is a proclamation of the governor in 1863, which brought into force in the colony, then Vancouver Island, the laws of England on the subject as they existed in 1858.

Most of the provincial Sunday observance laws were passed before Confederation. Although by the British North America Act criminal law, which includes questions of religion and morality, was assigned to Dominion jurisdiction, the provinces retained their Sunday observance laws and made some amendments. Court decisions on the Nova Scotia and Ontario laws indicated that these amendments were not within provincial authority.

The Dominion Lord's Day Act, passed in 1906, prohibited transaction of business or any labor for gain on Sunday unless permitted under the act as "works of necessity and mercy" or by provincial legislation. It also prohibited employment of any person in receiving, transmitting or delivering telephone or telegraph messages or in any industrial

process or in connection with transportation, to perform the usual work of his ordinary calling on Sunday unless he were given during the next six days, twenty-four consecutive hours of rest. This provision did not apply to industrial workers whose ordinary daily hours did not exceed eight. The law permitted numerous exceptions as "works of necessity and mercy," offenders could not be prosecuted without the consent of the Attorney General of the province concerned and provincial laws were not affected.

In 1895 the Ontario Legislature by an amendment to the Electric Railway Act forbade street railway companies to operate cars on Sunday on pain of the penalties provided in the Sunday observance act of the province. In the same year the Ontario government failed in a legal action to prevent the operation of Sunday street cars under the Sunday observance laws and amended the law in 1897 to bring street railways definitely within its provisions. When in 1903 the Privy Council held that the Sunday observance law was *ultra vires* of the provincial legislature the province was able, through its authority over property and civil rights, to forbid (1904, c. 10) street railways, tramways and electric railways subject to its jurisdiction to employ persons on Sunday. In 1909 any city with a population of over 50,000 was authorized to permit Sunday street cars if the voters approved, and in 1920 this authority was extended to any city with a population of 15,000. By a law of 1912 the maximum weekly work-period for street railway employees was fixed at six days of ten hours each.

In Manitoba, Alberta and Saskatchewan the evolution of the legislation with respect to the operation of street cars on Sunday has been the same as in Ontario with but slight variation. British Columbia has only one law on this subject—a statute of 1916 authorizing the Lieutenant-Governor in Council to make regulations limiting the number of days'

work in a week for street railway employees. Nova Scotia has empowered the Board of Commissioners of Public Utilities to limit the number of days in every eight days during which employees of the Halifax Electric Tramway Company can be employed. The provinces of Quebec, New Brunswick and Prince Edward Island have no legislation on the subject.

In 1904 the Dominion government provided that although a steam or electric railway might be transferred from provincial to Dominion jurisdiction the employees of any such railway should be subject to any laws of the province with regard to Sunday labor in force at that time.

Street railways now generally operate on Sunday, either in the absence of provincial legislation or through the repeal of such legislation or by permission of the municipality under authority granted by the province. While therefore many street-railway employees must work on Sunday, they have the protection of the Dominion Lord's Day Act, which guarantees, with a minor exception,[1] twenty-four consecutive hours' rest during the week.

The third group of laws on this subject comprises the various provincial acts which make provision for a weekly half-holiday for employees in shops. A law of the British Columbia legislature in 1916 compelled municipalities to establish a weekly half-holiday for shop employees, in this way guaranteeing to workers of this class a weekly rest period of a day and a half. This law of British Columbia is the only legislation of the kind in Canada. The early-closing acts of Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan authorize, but do not require,

[1] In the list of exceptions is "the operation of any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch which is, on the day of coming into force of this Act, regularly so operated."

municipalities to pass by-laws compelling retail stores to close for a weekly half-holiday.

Ontario in 1920, British Columbia in 1923, and Alberta in 1924 passed laws which assure to employees of fire departments twenty-four hours off duty in every week. Laws of Quebec, passed in 1918, and of Ontario, 1922, establish a weekly day of rest for hotel and restaurant employees. A weekly day of rest on Sunday was granted to employees in bakeshops in Ontario by the Bake Shops Act of 1896 and to workers in barber shops in the same province by a law of 1901. In British Columbia employees in bakeshops were given the Sunday rest in 1901.

While in Canada the weekly rest is generally given on Sunday, there is no specific provision in any of these laws, Dominion or provincial, requiring that in as far as possible the weekly rest shall be given to all the staff at once, as proposed by the convention of 1921, nor is there any provision for suspending or diminishing the rest period after consultation with organizations of employers and employees, as set forth in the same convention.

In the United States six states and the federal government have laws embodying this principle of one day of rest in seven. A federal law applies only to post-office employees. The California and Connecticut laws exempt "any case of emergency," and the Connecticut law has a long list of exemptions. The laws of Massachusetts and New York of 1913 and Wisconsin of 1919 are the most effective.[1]

[1] Commons and Andrews, *Principles of Labor Legislation,* pp. 280-81.

# CHAPTER IX

## Abolition of Child Labor

"The abolition of child labor and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development." (Treaty of Peace: Article 427, 6.)

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Children under fourteen shall not be employed in agriculture during hours fixed for school attendance (1921 convention), nor in industrial undertakings (1919 convention), nor on ships (1920 convention). Every employer in an industrial undertaking must keep a register of all persons under sixteen employed by him and of the dates of their births (1919 convention). Children under fourteen engaged in agricultural night work must be allowed at least ten consecutive hours' rest and young persons between fourteen and eighteen at least nine consecutive hours (1921 recommendation). In industrial undertakings young persons under eighteen shall not be employed during the night except that in continuous processes those over sixteen may be employed (1919 convention). Young persons under eighteen shall be excluded from employment in certain specified processes involving the use of white lead and may be employed in processes involving the use of lead compounds only under certain conditions (1919 recommendation). The employment of males under eighteen and of all females is prohibited in painting work of an industrial character involving the use of white lead (1921 convention). Employment of young persons under eighteen on ships is conditioned on an annual medical certificate of fitness (1921 convention) and with certain exceptions they must not be employed as trimmers or stokers on vessels (1921 convention).

The first child-labor legislation of Canada was passed in Nova Scotia in 1873, when the employment of boys under ten years in mines was prohibited and the hours of work for boys of ten and under twelve years were limited to ten for the day and sixty for the week. Now British Columbia, Ontario, Quebec, Alberta and Saskatchewan have prohibited the employment of women and girls in mines and these

provinces, together with Nova Scotia and the Yukon, have fixed a minimum age for boys employed as mine workers.

In the eighties Canada seems to have first discovered the deplorable conditions under which children were employed in industrial establishments,[1] just as England did a half-century before, and today all the provinces have placed some restrictions upon the employment of children.

The influence of the Trades and Labor Congress has been strongly in favor of child-labor legislation and its strict enforcement. In the Platform of Principles adopted in 1898 the Congress favored the abolition of child labor for children under fourteen years and in 1915 the Congress held that no children under sixteen years should be employed.

### CHILD LABOR IN MINES

#### *Nova Scotia*

The regulation of child labor in mines first appeared in the legislation of Nova Scotia in the revision and consolidation of the statutes, Fourth Series, 1873 (c. 10). This law, the Mines Regulation Chapter, forbade the employment of boys under ten years of age above or below ground. The employment of boys of ten years and under twelve years underground was not to exceed ten hours in the day or sixty hours in the week, these hours being counted from the time of leaving the surface to the time of returning to the surface. The act required that every person in charge of an engine, windlass or gin for the transporting of persons up or down a shaft or along a level and every person in charge of the machinery or tackle in connection therewith

[1] *Cf. Report of the Royal Commission on the Relations of Labor and Capital*, 1889, especially the paragraphs on "Employment of Children" and "Child-Beating," p. 10; "Child and Female Labor," p. 36; "Fining of Employees," p. 91; and references in the index under "Child Labor" in the volumes of evidence for the different provinces.

should be a male of not less than eighteen years. The law stated that when such machinery was worked by an animal the driver should not be under twelve years of age and that the person having direction of the driver should be a male of at least eighteen years. Penalties were imposed on mine operators for contravention of these regulations and it was provided that if a child under age were employed in good faith by the management on misrepresentation of his age by the parent or guardian the penalty should be imposed upon the parent or guardian.

This act was amended in 1891 (c. 9) when the minimum age for boys employed above or below ground was advanced from ten years to twelve and it was required that after one year had passed every boy under eighteen years of age employed for the first time should be able to read, write and have learned the rudiments of arithmetic and should furnish a certificate to that effect from a duly licensed teacher. The maximum hours for the week were reduced from 60 to 54 for boys of twelve and under sixteen years instead of ten and under twelve years, as before, but longer hours could be worked in case of emergency. The amendment provided also that when an engine, windlass or gin was worked by an animal the driver should be at least fourteen years of age, rather than twelve years, as in the earlier law.

In the revision of 1900 separate laws for coal mines (c. 19) and metalliferous mines (c. 20) were included and the text was such as to permit the employment of boys under twelve years, the section reading: "No boy of or above the age of twelve years and under the age of sixteen years shall be employed. . . ." This was rectified in 1902 (c. 5), when it was explicitly stated that no boy under twelve years should be employed below or above ground. The child-labor provisions, identical in the two laws, were the same as in the act of 1891.

The provisions as to metalliferous mines were in 1911 (c. 16) extended to quarries and in the consolidating act of 1913 (c. 15) boys from twelve to sixteen were required to have passed grade seven, rather than to know "the three R's", before being employed. There was no further change in the minimum age of employment in coal mines until 1923 (c. 54), when it was advanced to sixteen years. In metal mines the minimum age for boys is still twelve.

*British Columbia*

Legislation for the regulation of child labor in British Columbia mines began with the Coal Mines Regulation Act of 1877 (no. 15), which forbade the employment of boys under twelve years in or about any mine to which the act applied and also the employment of girls or women below ground. Boys of thirteen and under fourteen years might be employed below ground in mines in which their employment was considered necessary by the Minister of Mines because of the thinness of the seams, but in any such case the employment was limited to five days a week and six hours a day. Boys of twelve and under thirteen years and male young persons under sixteen years were permitted to work underground thirty hours in a week but not more than six hours in any one day. It was required that boys and male young persons employed below ground should be allowed an interval of not less than eight hours between the period of employment on Friday and that on the following Saturday, and in other cases not less than sixteen hours between each period. The period of employment was deemed to begin at the time of leaving the surface and to end at the time of returning to the surface.

The employment of children under twelve years above ground was prohibited and the hours for children under fourteen years working above ground were the same as for

boys working underground, and young persons working on the surface were given the same hours as those for male young persons under sixteen as indicated above. The employment of young persons or children between nine o'clock and five on the following morning or on Sunday or after two on Saturday afternoon was forbidden, but the Minister of Mines was empowered to grant exemption from the provision forbidding the employment of young persons and children after two o'clock on Saturday afternoon. Young persons and children were allowed not less than half an hour for meals during each period of employment in excess of five hours and not less than one and a half hours during each period in excess of six hours. The act required that a record should be kept in the office of the mine of the name, age, residence and date of first employment of all boys of twelve years and under thirteen and of all male young persons under sixteen years employed below ground, and also of all young persons and children employed above ground. It was provided that no person could have charge of an engine, windlass or gin for hoisting or lowering persons or transporting them along a shaft or level unless he were a male of not less than eighteen years of age. When the engine, windlass or gin was worked by an animal, the driver could not be under twelve years of age and the person under whose direction he worked had to be a male of at least eighteen years. Mine operators were exempted from any penalty under the act when a person under the legal age was employed on the representation of his parent or guardian that he was of the age required, but in that case the parent or guardian was deemed guilty of an offence under the act. The immediate employer of every boy or male young person below ground in a mine was required to report to the manager or a person appointed for the purpose the fact that he was about to employ such a worker in the mine.

In 1883 (c. 2) the age sixteen was changed to fourteen throughout the child-labor provisions of the law, thus limiting to 30 a week the hours of work below ground for boys from twelve to fourteen instead of twelve to sixteen, as formerly.

A special act applying to metalliferous mines, the Inspection of Metalliferous Mines Act, was passed in 1897 (c. 27). By this act the employment of boys under twelve years or girls of any age below ground in metalliferous mines was prohibited. The hours for boys under sixteen employed underground were limited to ten in the day and 54 in the week. It was also required that the person in charge of hoisting machinery should be a male of at least eighteen years. Mine operators were required to keep a register, available for examination by the inspector, of the name, age, residence and date of first employment of all boys under sixteen years employed below ground and of women, boys and girls employed on the surface. The act contained no limitation on the ages of children employed on the surface. Hours for boys employed below ground were reduced to eight in 1899 (c. 49) by the law which provided that no person should be employed underground in any metalliferous mine for more than eight hours in every 24. No change has been made in the child-labor provisions of this act.

The coal-mines legislation was consolidated in 1911 (c. 33), when the age at which boys could be admitted to employment in mines was advanced from twelve to fifteen years and the age for employment above ground from twelve to fourteen years. The employment of girls on the surface was limited to clerical work or domestic duties in hotels or boarding houses in connection with collieries. The minimum age for a person in charge of any engine, windlass or gin was advanced from 18 to 22 years. There has been no further legislation.

*Ontario*

Mining legislation in Ontario was enacted at the first session of the legislature—the Gold and Silver Mining Act of 1868—but regulation of the employment of children in mines did not appear until the Mining Operations Act of 1890 (c. 10). This law was limited in its application to mines in which more than six persons, other than the owner, were employed underground, but the child-labor clauses applied to all mines without regard to the number of employees. By this act boys under fifteen could not work underground and girls and women neither in nor about a mine. The employment of boys of fifteen and under seventeen years was permitted for eight hours in the day and 48 in the week, the period of employment to begin at the time of leaving the surface and to end at the time of returning to the surface. The person in charge of an engine, windlass or gin for hoisting or conveying persons along shafts was required to be a male of at least 20 years and the driver of any animal working the engine, windlass or gin was required to be at least sixteen.

These provisions were incorporated in the Mines Act of 1892 (c. 9), consolidating the General Mining Act and the Mining Operations Act. An Act Relating to Mines and Mining Lands, passed in 1894 (c. 16), which extended the application of the act to roast yards and smelting furnaces, applied the child-labor provisions to quarries also, and in 1896 (c. 13) they were applied, regardless of the number of employees, to all mines, quarries and pits, and to oil, gas and salt wells and other openings, and to all furnaces or works for smelting.

The provision that girls should not be employed at mining work was modified in 1906 (c. 11) by the clause "except in the case of mica-trimming works." The employment of children in mines was not further restricted until

1912 (c. 8), when the employment of boys and girls under fourteen years in or about any mine was prohibited and boys under seventeen were forbidden to work below ground. Girls or women could not be employed in or about a mine except as stenographers, bookkeepers or in some similar capacity. The requirement that the person in charge of machinery used in hoisting persons in a mine should be at least 20 was retained, with the addition of a sub-section providing that no one under eighteen should be in charge of hoisting apparatus of any kind.

By an amendment of 1919 (c. 12) new child-labor provisions were substituted. According to the new law no male person under sixteen could be employed in or about any mine and no male person under eighteen below ground. Only persons over 20 years could have charge of any engine for hoisting or hauling persons in a shaft or winze, but there was an additional requirement of at least one month's experience on a reversing hoist.

*Quebec*

Child-labor provisions were first inserted in the Quebec Mining Law in 1892 (c. 20). No woman or girl could be employed in the working of a mine, no male child under fifteen years could be employed in the underground works of any mine or quarry, no male child of fifteen and under seventeen could be employed underground for more than 48 hours in any one week, and no male child under 20 years could be employed in working machinery in or near a mine except that boys of not less than sixteen might be employed as drivers when the machinery was put in motion by animals. The employment of boys as drivers in this way "in or near a mine" was changed to read "a mine, a mill or works where ores are treated" by an amending act of 1915 (c. 35).

An act of 1922, first session, (c. 44), changed these

regulations. By this law no male person under 20 years of age could have charge of hoists or windlasses for hoisting or lowering workmen, and no male person under eighteen years was allowed to have charge of machinery of any kind used for hoisting, haulage, drilling or blasting. It was also stipulated that the transmission of signals for putting such machinery in motion should not be entrusted to any one under the age of sixteen.

### *Northwest Territories*

The first regulation of mines in the Northwest Territories, contained in the Coal Mines Regulation Ordinance of 1893 (no. 5), included provisions as to child labor. This ordinance required that a register for recording of the name, age, residence and date of first employment should be kept, not only for young workers but for all persons employed in connection with the mine. The person in charge of any engine, windlass or gin for hoisting or transporting persons in the mine should be a male of at least eighteen years. In 1898 (no. 9) a section was incorporated providing that boys under the age of twelve and girls of any age should not be employed in the workings of any mine.

### *The Yukon*

The Yukon Territory in 1901 (no. 38) passed the Miners Protection Ordinance, which applied to every mine in the territory and provided that boys of twelve and under sixteen could not be employed above or below ground in a mine for more than 48 hours in any one week and for more than eight hours in any one day except in case of accident or emergency. Boys of these ages could be employed only if able to read and write and were "familiar with the rules of arithmetic as far as and including division," and furnished a certificate to that effect. Teachers and inspectors of

mines were required under penalty, on application of boys desiring employment, to make the necessary examination and grant the certificate. This legislation has been continued without change.

*Alberta*

In 1906, the year of the first legislative session of the Province of Alberta, the Coal Mines Act (c. 25) forbade the employment of girls of any age and boys under twelve years in the workings of any mine. This had been the provision in the ordinances of the Northwest Territories but Alberta added a provision that boys of twelve years and under sixteen could not work below or above ground in or about any mine unless they were able to read and write and were "familiar with the rules of arithmetic as far as and including division" and furnished certificates to that effect from some qualified provincial school teacher, employed in that capacity at the time of granting the certificate. Teachers were required, under penalty, to examine boys desiring employment and grant the certificate to qualified boys without charge. As in the Northwest Territories' legislation boys under eighteen could not have charge of hoisting machinery. Alberta added a provision however that when the hoisting machinery was worked by an animal the driver should not be under fourteen. A register of employees was to be kept.

The wording of the sections on child labor were changed by the Statute Law Amendment Act of 1908 (c. 20, s. 16) and the minimum age for employment underground was raised to sixteen, unless employed at the date of the commencement of the act. Above ground the provisions of the 1906 act as to boys between twelve and sixteen applied.

The Mines Act, which applied to all mines in the province, was passed at the first session in 1913 (c. 4). This law re-

tained the sixteen-year minimum for employment below ground but changed the application of the educational requirement for employment above ground from boys "twelve to sixteen" to those "fourteen to sixteen." Boys of fourteen years were permitted to work on the surface but boys driving animals for working hoisting machinery were required to be at least sixteen years of age instead of fourteen, as in the earlier legislation. Girls of any age were not permitted to be employed below or above ground except for office work at the surface. As before, employers were required to maintain a register of all employees.

### *Saskatchewan*

When Saskatchwan was established as a province in 1905 the regulations of the Northwest Territories with reference to child labor in coal mines became the law of the province and no changes were made until the second session of 1917 (c. 10) when a new law, applying to all mines in the province, was passed. This raised the minimum age for employment of boys to fourteen years and continued the prohibition against the employment of any girls in mines. The minimum age of eighteen for a person in charge of machinery was retained as was also the provision for a register of all employees.

## CHILD LABOR IN FACTORIES

### *Ontario*

Clauses for the regulation of child labor were included in the Factories Act of Ontario, as first enacted in 1884 (c. 39), a measure which applied only to factories employing more than 20 persons. In this act "child" was defined as a person under the age of fourteen years and "young girl" as a girl of fourteen years and under eighteen years. The child-labor sections of this law, the first factory act passed

in the Dominion, were closely followed in the subsequent legislation of the other provinces. It has seemed desirable therefore to give the text:

5. It shall not be lawful to employ in a factory any child, young girl or woman so that the health of such child, young girl or woman is likely to be permanently injured, and whoever so employs any child, young girl, or woman shall, upon summary conviction thereof, incur and be liable to imprisonment in the common gaol of the county . . . for a period not exceeding six months or to a fine of not more than one hundred dollars. . . .

6. To employ in a factory any child or any young girl or woman shall be deemed to be not lawful, and so that the health of such child, young girl or woman is likely to be permanently injured, if in that factory there is any contravention of the following provisions of this section, that is to say:

(1) No boy under twelve years of age, and no girl under fourteen years of age, shall be employed in any factory.

(2) Except as hereinafter provided, a child between the ages of twelve and fourteen years shall not be employed in any factory, unless the employer of such child has in his possession, and produces when thereto requested by the inspector, either a certificate signed by the parent of such child, in which certificate the person signing it shall state the date thereof, the age of such child at said date, and the birthplace of such child, or, in case there is not in Ontario any one having the legal custody or control of such child, the written opinion of a registered physician that such child is of not less than twelve years of age.

(3) It shall not be lawful for a child, young girl or woman to be employed for more than ten hours in one day, nor more than for sixty hours in any one week, unless a different apportionment of the hours of labour per day has been made for the sole purpose of giving a shorter day's work on Saturday.

(4) In every factory the employer shall allow each child and each young girl and woman therein employed not less than one hour at noon of each day for meals, but such hour shall not be counted as part of the time herein limited as respects the employment of children, young girls and women.

7. A child shall not be allowed to clean any part of the machinery in a factory while the same is in motion by the aid of steam, water, or other mechanical power;

A young girl or woman shall not be allowed to clean such part of the machinery in a factory as is mill-gearing, while the same is in motion for the purpose of propelling any part of the manufacturing machinery;

A child or young girl shall not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other machinery power;

A child, young girl, or woman, allowed by an employer to clean or to work in contravention of this section, shall be deemed to be employed by him contrary to the provisions of this Act, and to have contravened said provisions.

Some exemption from these provisions was made in the matter of hours. The Lieutenant-Governor in Council could made regulations under which, in case of any accident or occurrence beyond the control of the employer preventing the regular operation of the factory or when any custom or exigency of the trade required that children, young girls or women should be employed for longer hours, the inspector might permit such exemption as would in his judgment "fairly and equitably to the employers and to the children, young girls and women in such factory make up for any loss of labour from such accident or occurrence, or meet the requirements of such custom or exigency of trade." It was stipulated that under any such exemption no child, young

girl or woman should be employed before 6 a. m., or after 9 p. m., or for more than 12½ hours in any one day or 72½ in any one week. The period of exemption was not to comprise more than six weeks in any one year nor could the time fixed for meals be diminished. Employers granted permission to employ children, young girls and women for the longer hours were required to keep a record of the hours worked daily by each employee. It was also required that a statement of the hours during which children, young girls and women were permitted to be employed in the period of the exemption should be signed by the inspector and by the employer and displayed in a conspicuous place in the factory.

The law of 1884 had forbidden the employment of boys under twelve and girls under fourteen years of age in a factory but in 1887 (c. 35) it was amended by the addition of the following sub-section which provided that boys under twelve and girls under fourteen might be employed on some of the work in connection with canneries during the months of July, August and September:

> Notwithstanding anything in this Act contained, boys under twelve years of age and girls under fourteen years of age may be employed during the months of July, August and September in any year in such gathering in and other preparation of fruits or vegetables for canning purposes as may be required to be done prior to the operation of cooking or other process of that nature requisite in connection with the canning of fruits or vegetables. The place, room or apartment in which such boys or girls may be so employed shall be separate from any other wherein the cooking or other process aforesaid or the canning of said fruits or vegetables is carried on.

This amendment was opposed by the trade unions, but according to the *Canadian Manufacturer,* the *Toronto Globe* was of the opinion that "employment of children under the

prescribed conditions is likely to prove a positive advantage both to the children and the parents."[1]

A law of 1889 (c. 43) extended the child labor clauses of the factory act to employment on work contracted out. This law required that any child, young girl or woman employed on such work should be considered as in the employment of the original owner, tenant or occupier for the purposes of the act. The term "factory" was defined as an establishment employing more than five persons instead of more than 20 persons, as in the original law. The section which forbade the employment of a child between twelve and fourteen years unless the employer could produce a certificate of the child's age was changed to read "boy" instead of "child."

The same law permitted the employment of boys under twelve and girls under fourteen during the four months from July to October instead of from July to September as in the previous legislation. The exemptions granted with regard to canning were by this law extended to include desiccating.

In the original act the Lieutenant-Governor in Council was authorized to make regulations under which the inspector could permit some overtime by children, young girls and women in case of any emergency. This was now amended to leave the initiative with regard to such regulations with the inspector rather than the Lieutenant-Governor in Council, although the inspector was required to have regard to any regulations on the subject made by the Lieutenant-Governor in Council.

In granting certain exemptions with regard to overtime by children, young girls and women the original act stated that the time fixed for meals should not be diminished but the law required only that not less than one hour at noon should be allowed for meals. This was insufficient when the

[1] *Canadian Manufacturer*, May 6, 1886, p. 271.

hours were extended to 12½ for the period of the exemption and the amendment provided that not less than 45 minutes should be allowed for an evening meal between five and eight o'clock in the afternoon in the exemption period when the workers were kept employed later than seven o'clock.

The original act required that the exemption with regard to child labor should not comprise more than six weeks in any one year. The amending law declared that this authorized overtime employment of children, young girls or women for 36 days only in any twelve months and that in reckoning this period every day on which the worker had been employed overtime should be taken into account.

A clause was also inserted permitting the employment of children, young girls and women during the months of July, August, September and October later than 9 p. m. in the canning or desiccating of fruits or vegetables. These workers were not to be employed later than 9 p. m. for more than 20 days during these months and 45 minutes between 5 and 8 p. m. was set aside for an evening meal whenever the employment continued after 7 p. m.

The Trades and Labor Congress resolved in 1894 to petition the Ontario Government to further amend the factories act by advancing the minimum age for the employment of boys to fourteen years [1] and in 1895 (c. 50) it was enacted that no boy or girl under fourteen years of age should be employed in any factory except in the business of canning and desiccating fruits and vegetables and the work incidental thereto. This provision was substituted for the previous regulation that no boy under twelve years of age and no girl under fourteen years should be employed in any factory. The regulation that a boy between twelve and fourteen years should not be employed unless the employer

[1] *Trades and Labor Congress*, 1894, p. 23.

could produce a certificate of the child's age was repealed. This law also authorized the Lieutenant-Governor in Council to prohibit by order-in-council the employment of girls under the age of eighteen and boys under sixteen in factories in which the work was deemed to be dangerous or unwholesome.

The provision that made it unlawful for a child, young girl or woman to be employed more than ten hours in one day or 60 hours in any week, unless a different apportionment of the hours were made to give a shorter day's work on Saturday,[1] was amended in 1904 (c. 26) by the addition of the following clause: "The hours of working in any one day shall not be later than half past six o'clock in the evening, unless a special permit in writing is obtained from the Factories Inspector."

This amending act also extended the period during which boys and girls under fourteen years might be employed in the canning and desiccating of fruits and vegetables. It had been permitted to employ these workers in the four months, July to October, but this law added the month of June. In 1905 and 1906 the Trades and Labor Congress asked for the prohibition of the employment of children under fourteen years in canning factories and in offices and stores as well.[2]

A special committee of the Ontario Legislature, appointed in 1907 to enquire into the administration of the provincial legislation on child labor, reported that the laws were not sufficiently comprehensive and that the compulsory education law had not been adequately enforced. The Shops Act permitted the employment of children of ten years while under the Factories Act the limit was fourteen years. The act did not adequately cover home work under sweat-shop condi-

[1] *Cf.* sec. 6 (3) on p. 313.

[2] *Trades and Labor Congress*, 1905, p. 36; 1906, p. 12.

tions nor hotels and other places where children were employed. They recommended that the legislation should be revised and consolidated; that children between fourteen and sixteen years should be required to present age certificates when applying for employment; that hours should be reduced and that children should not be permitted to work at night. In the committee's opinion the child-labor privileges granted the canners should be curtailed, children should not be employed as porters or delivery-wagon drivers and various restrictions upon the employment of children in breweries and distilleries, as newsboys and performers were recommended.[1]

In 1908 (c. 57) the term "youth" was defined as "a male of the age of fourteen years and under the age of sixteen years" and the sections of the Factories Act with regard to the hours of children, young girls and women; overtime in case of accident or emergency; the recording of such overtime; and the posting of the hours of these workers were made to apply to youths as well. With regard to the provision for the employment of boys and girls under fourteen years in canning and desiccating fruits and vegetables the amendment permitted boys and girls between the ages of twelve and fourteen to be engaged in this work and children under twelve years when employed solely out of doors. The employment of these young workers was allowed "notwithstanding anyhing contained in this Act." The following subsection was also added:

> The hours of working for children between twelve and fourteen years of age in canning factories under this section are limited to the time between seven o'clock in the morning and six thirty o'clock in the evening, or such other period of the day as may be granted by the Factory Inspector; provided,

[1] *Labour Gazette*, vol. vii, p. 1122.

however, that the time worked in any one day shall not exceed ten hours.

In 1908 the factory inspectors were empowered on advice from the attorney-general to require employers to procure birth certificates at their own expense in all cases where the age of the minor appeared open to question. Formerly a written statement from the parents had been accepted as sufficient evidence of age. The Canadian Manufacturers' Association sent notice of this change to all their Ontario members and many of the employers adopted the practice of requiring parents to submit birth certificates before the children were accepted for employment.[1] The parliamentary committee of the Association drafted an amendment to the Factories Act which proposed to transfer the onus of proof of the age of any child worker from the employer to the parent or guardian, but it failed to become law although introduced in the legislature.

Public laundries were included within the definition of factory in 1911 (c. 70) and in 1913 (c. 60) the Factory, Shop and Office Building Act was passed, which consolidated the previous acts with reference to factories and shops and added new provisions. Factories, shops (including specifically bakeshops) and office buildings were included in the scope of the act. As in the earlier laws the maintenance of a register of all child, girl and women employees was required.

By a law of 1914 (c. 40) the maximum work day of ten hours for children between twelve and fourteen years employed in canning factories as provided in the section added in 1908 was reduced to eight hours. The following clause was added to the regulations as to elevators: "In a factory, shop, or office building no person under the age of eighteen shall be allowed regularly to operate or control an elevator."

[1] *Industrial Canada*, October, 1908, p. 220; October, 1909, p. 275.

The application of the act was extended in 1918 (c. 44) to every factory operated by any power machinery other than hand power, rather than to factories employing more than five. In this act the employment of children under fourteen in factories was forbidden and the clauses permitting the employment of children in canning and desiccating fruits and vegetables were repealed. At the same time the section authorizing the employment of women to a later hour than half past six o'clock in the afternoon during the four months of July to October in canning and desiccating was struck out. The Ontario executive of the Trades and Labor Congress immediately adopted a new objective and asked the provincial government to prohibit the employment of children under sixteen in any factory.[1]

In 1919 (c. 64) the Factory, Shop and Office Building Act was amended by the addition of a number of sections regulating conditions under which women and girls might be lodged in camps during temporary employment.

In 1920 the Trades and Labor Congress went on record as in favor of legislation prohibiting the employment of boys under eighteen years in night work in any industry.[2]

An amendment in 1921 (c. 76) to the Factory, Shop and Office Building Act stated that the provision that no person under fourteen should be employed in any shop as defined in the act did not apply to any shop where only members of the employer's own family dwelling in a house to which the shop was attached were employed at home. A clause was also included that nothing in the act should be deemed to authorize the employment of any child, youth, young girl or woman in contravention of the Adolescent School Attendance Act of 1919.[3]

[1] *Trades and Labor Congress*, 1918, p. 37.

[2] *Ibid.*, 1920, p. 102.

[3] *Cf. infra.*

### *Quebec*

The child labor clauses of the Quebec Factories Act, passed in 1885 (c. 32), were practically identical with those of the Ontario law of the previous year, given above. As in Ontario the act applied only to factories employing more than 20 persons. No boy under twelve years and no girl under fourteen years could be employed in any factory. A child between twelve and fourteen years could not be employed in a factory unless the employer had possession of a birth certificate for the child. Children, young girls and women were not to be kept at work more than ten hours in one day, except to give a shorter day's work on Saturday, nor more than 60 hours in any week. The Ontario act prohibited the employment of children in cleaning machinery in motion while the Quebec law authorized the inspector to forbid any worker being employed in cleaning any machinery while in motion, except the steam engine. In case of accident or emergency inspectors were empowered to grant the same exemptions from the provisions with regard to working hours as in the Ontario law. Employers were required to keep a register of the children, young girls and women employed in the factory.

The clause limiting the application of the act to factories employing more than 20 persons was deleted by an amendment of 1888 (c. 49). The provision that each child, young girl and woman should be allowed not less than one hour for a meal at noon was amended in 1889 (c. 32) and this was required only at the direction of the inspector.

In 1890, first session, (c. 39) a section was added which provided that—

> No male child, aged less than fourteen years, and no girl, aged less than fifteen years, can be employed in any factory mentioned in a list showing the establishments that are con-

sidered unhealthy by the inspector, which list shall have been approved by the Lieutenant-Governor in Council.

This clause seems to have been added in view of the reference to the evils of child labor in cigar and tobacco factories in the Report of the Royal Commission on the Relations of Labor and Capital, published in 1889.[1]

New provisions with regard to the age of children employed in factories were enacted at the second session of 1890 (c. 26).

3026. The employment in a factory of any child, of any young girl, or of any woman, is unlawful, and the health of such child, young girl or woman is, within the provisions of this section, likely to be permanently injured, if in that factory there is any contravention of the following provisions of this section, that is to say:

1. No male child, aged less than fourteen years, and no girl, aged less than fifteen years, can be employed in a tobacco or cigar factory;

2. In the factories indicated in a list approved by the Lieutenant-Governor in Council, as unhealthy and dangerous, the age of the employees cannot be less than sixteen years for boys and eighteen years for girls.

3. In all factories, other than those above mentioned, the age must not be less than twelve years for boys and fourteen years for girls.

As in the 1885 act a certificate was required to be presented to the inspector as to the age of children employed and the regulation which fixed the maximum hours for children, young girls and women at ten in any day and 60 in any one week was amended by the addition of the following paragraph: " 3027 (4). The day of ten hours' work, mentioned in this article, shall not commence before six of the

[1] *Cf. supra*, p. 79.

clock in the morning nor end after nine of the clock in the evening."

In 1891 and 1892 [1] the Trades and Labor Congress resolved "that the Government of the Province of Quebec be requested to pass an Act fixing at eight hours the working day for women and children employed in work shops, shops and factories" and in 1893 the Congress asked that the Factories Act should be amended so as to prohibit the employment of children unable to read and write, except in the case of deaf and dumb children.[2] The Congress gave a good deal of attention to the child-labor situation in Quebec in 1893. In that year another resolution [3] was adopted protesting against the employment of children under fourteen years in handling brick and stone for contractors on civic works. The provincial government was also requested to prevent the employment of children of fourteen years or less in factories for the carrying or dragging loads of more than 25 pounds, and that women should be prohibited from drawing trucks in factories and from carrying or dragging loads in excess of 40 pounds.[4]

In 1894 (c. 30) the minimum-age requirements established by the law of 1890 were repealed and in the new provisions then established the right given to tobacco factories to employ children of younger age than those permitted in factories classified as unhealthy and dangerous was withdrawn. Tobacco and cigar factories were at this time included in the list of unhealthy establishments and they were not permitted to employ boys under sixteen years of age or girls under eighteen years. The new regulations were as follows:

[1] *Trades and Labor Congress*, 1891, p. 18; 1892, p. 17.

[2] *Ibid.*, 1893, p. 12.

[3] *Ibid.*, 1893, p. 13.

[4] *Ibid.*, 1893, p. 17.

3023. In establishments classified by the Lieutenant-Governor in Council as dangerous, unwholesome or inconvenient, the age of the employees shall not be under sixteen years for boys and eighteen years for girls or women.

2. In all establishments other than those indicated in the preceding paragraph, the age of the employees shall not be less than twelve years for boys and fourteen years for girls.

3. The employer of the child or young girl shall, if required, exhibit to the inspector a certificate of age signed by the parents, tutor or other persons having the lawful custody or control over such child or young girl, or the written opinion of a physician on the subject.

3024. A new examination of the children or girls, already allowed to work in a factory, may, at the request of the inspector, be made by one of the sanitary physicians, or by any other physician, and upon the advice of such physician, the employee examined may be discharged for being under age or physically unfit.

3025. Except in the case mentioned in article 3026, no boy, under eighteen years of age, and no child, girl or woman shall be employed in any of the establishments mentioned in article 3020 for more than ten hours in one day or for more than sixty hours in any one week. Any employer may apportion the hours of labor per day for the sole purpose of giving a shorter day's work on Saturday.

One hour shall be allowed at noon each day for meals, if the inspector so direct, but such hour shall not be counted as part of the time herein limited as respects their employment.

The day of ten hours mentioned in this article shall not commence before six o'clock in the morning nor end after nine o'clock at night.

3026. The inspector, for sufficient reasons given to him, and in order to make up for lost time or to satisfy the exigencies of trade, may, for a period not exceeding six weeks, extend the time of employment of children, girls and women to twelve hours in a day, or seventy-two hours in a week, provided that

the day shall not commence before six o'clock in the morning nor end after nine o'clock in the evening, in the following cases:

(a) When any accident, which prevents the working of any industrial establishment, happens to the motive power or machinery; or

(b) When, from any occurrence beyond the control of the employer, the machinery or any part or the machinery of any industrial establishment cannot be regularly worked; or

(c) When any stoppage occurs from any cause whatsoever.

Employers were to keep a register of names, ages and hours worked for the boy, girl and women employees.

Almost a decade passed before any further progress was made in child-labor legislation in Quebec. In 1899 the provincial executive committee of the Trades and Labor Congress was instructed to seek an amendment to the factory act for the more stringent regulation of child labor. In 1901 the provincial executive committee of the Congress thought that the legislature should be asked to prohibit all manual labor by children under fourteen years of age [1] and in 1903 a further advance was made. The legislation as it existed at that time required that in all establishments other than those classified by the Lieutenant-Governor in Council as "dangerous, unwholesome or inconvenient" no boys under twelve or girls under fourteen years should be employed. The law of 1903 (c. 30) advanced the minimum age for boys to thirteen.

A further amendment in 1907 (c. 39) fixed the minimum age for both boys and girls at not less than fourteen years and the inspector was empowered to require that the certificates as to age should be verified by affidavit. It was also stipulated that any child or young girl employee under sixteen years of age, not able to read and write, should attend a night school; employers were called upon to ascertain if

[1] *Trades and Labor Congress*, 1901, p. 51.

these young workers could read and write and, if not, to secure certificates of attendance at night school.

In 1910 (c. 27) the clause requiring the attendance of illiterate children at night school was repealed and the following was substituted:

3835. No employer shall employ in an industrial establishment any boy or girl less than sixteen years of age who is unable to read and write easily and fluently. An inspector, when he thinks proper, may require children less than sixteen years of age to undergo an examination upon their education and may dismiss them if they cannot read and write easily and fluently; and he may also require a birth certificate from the children to prove their age.

This law also reduced the working hours for young employees in cotton and woolen factories. In 1909 the trade unions had complained that children were often employed in the cotton mills thirteen and fourteen hours in the day; they resolved that a 60-hour week was too long for young workers and the provincial executive committee was instructed to request the government to amend the law in this regard.[1] The amendment of 1910 provided that no boy under eighteen years and no child, girl or woman should be employed in cotton or woolen factories more than ten hours in the day or 58 hours in the week. The employer could make a different apportionment of the hours, not exceeding ten and one-half in any one day, to give a shorter day's work on Saturday. An hour was set aside for a meal at noon and it was provided that the day should not begin before 6.30 a. m. nor end after 6.30 p. m.

The provincial executive committee reported at the next meeting of the Trades and Labor Congress that they had been able to secure the introduction of a bill in the legisla-

[1] *Ibid.*, 1909, p. 72.

ture for a maximum week of 54 hours but that a delegation of cotton-mill operators had succeeded in having the hours increased to 58.[1] At the next annual meeting of the Canadian Manufacturers' Association it was stated that the bill reducing the hours from 60 was objected to and that a compromise of 58 hours was finally agreed upon in committee.[2]

The unions made progress in 1912 (c. 36) when the maximum weekly hours in cotton and woolen factories were reduced from 58 to 55. The provision for a different apportionment of hours in order to give a shorter Saturday was omitted and it was required that the work-day should not begin before 7 a. m., instead of 6.30 a. m. as in the earlier legislation.

The provincial executive committee of the Trades and Labor Congress, reporting in 1914, regretted the growing tendency to employ child labor and the long hours and unsanitary conditions for young workers, particularly in the garment trades,[3] and in 1919 the Congress referred to the provincial executive committee a resolution[4] submitted by the Cigarmakers' Union of Montreal which called upon the Quebec Government to advance the minimum age for persons employed in establishments classed as dangerous or unhealthy from sixteen to eighteen for boys and from eighteen to 21 for girls or women and also requested that the working hours for children should not be more than eight in the day and 48 in the week.

In 1919 (c. 50) the article amended in 1910 (c. 27), given above, was replaced by the following:

[1] *Trades and Labor Congress*, 1910, p. 26.

[2] *Industrial Canada*, October, 1910, p. 298.

[3] *Trades and Labor Congress*, 1914, p. 26.

[4] *Ibid.*, 1919, p. 214.

3835. It is forbidden for any employer in any industrial establishment . . . to employ any boy or girl less than sixteen years of age, who is unable to read and write fluently and easily.

3835b. Every boy or girl less than sixteen years of age, employed as aforesaid, in addition to the examination to which he or she may be submitted by the inspector, must have a certificate of study to the inspector's satisfaction, and produce it whenever called upon so to do.

Parents and tutors of boys and young girls must, as far as possible, come before the inspector to have the age certificates or certificates of study required by law, verified.

The form of certificates of study shall be drawn up by the Chief Inspector and be uniform in all parts of the Province.

3835c. Boys and girls under sixteen years of age, enrolled as pupils of a night school, and who assiduously attend the classes of such school, may be authorized by the inspector to follow or continue their occupation.

3835d. If an employer employs a boy or a girl who has not complied with the provisions of this Act, he cannot, in case of accident, plead contributory negligence on the part of the victim.

3835e. Employers must carefully keep the copies of age certificates furnished by apprentices and put them at the disposal of the male and female inspectors for the purposes of the service.

### *Manitoba*

The child-labor sections of the Manitoba Factories Act, as first enacted in 1900 (c. 13), marked a considerable advance on the ten-hour day and the 60-hour week permitted at that time for boys of twelve and girls of fourteen years in Ontario and Quebec. According to the Manitoba law no child under sixteen years could be employed in any factory. The Lieutenant-Governor in Council was empowered to prohibit the employment of girls under eighteen and boys under sixteen in factory employment deemed to be dangerous or unwholesome. No young girl over sixteen years

or woman could be employed more than eight hours in one day or more than 48 hours in any week except to give a different apportionment of the hours for a shorter day on Saturday. One hour was set aside for a meal at noon. The exemptions with regard to the hours of young girls and women followed the earlier legislation of Ontario and Quebec. In such exemptions no woman or young girl could be employed before 6 a. m. nor after 9 p. m. nor for more than ten hours in the day nor 60 in the week. As in the earlier laws the exemption could not exceed 36 days, including overtime, in any year and if the employment continued after 7 p. m. time was to be given between 5 p. m. and 8 p. m. for an evening meal. It was required that notice of the exemption and of the hours for young girls and women should be posted in the factory. This act applied however only to factories where more than four persons were employed. A register of women and girls was required.

As seems to have been anticipated by the unions [1] the protection afforded to child workers in this act was very considerably curtailed by an amendment of 1904 (c. 16). The provision that no child under sixteen could be employed in a factory was changed to no boy under fourteen and no girl under fifteen. The working hours were changed from eight in the day to nine. The provisions with regard to exemptions from the statutory hours were also altered. No woman or young girl over fifteen, rather than sixteen as in 1900, could be employed before 7 a. m. nor after 10 p. m., instead of 6 a. m. and 9 p. m. as in the original act. The maximum hours under the exemption were increased from ten to twelve and a half for the day and from 60 to 72½ for the week. The provincial executive committee of the Trades and Labor Congress reported that their delegation of protest to the legislature was confronted by

[1] *Trades and Labor Congress*, 1902, p. 66.

a large delegation of employers and they deplored "the mutilation by the legislature of a law that was justly the pride of our province." [1]

Hours for boys had not been specified in the earlier legislation and in 1915 (c. 24) it was provided that the maximum day of nine hours and the maximum week of 54 hours, established for young girls and women, should also apply to boys of fourteen and under seventeen years.

The application of the act to factories employing five or more was changed in 1916 (c. 41) to those employing three or more and to Chinese laundries. In this act also the maximum daily hours for women and young girls during the periods of exemption granted by the inspector were reduced from twelve and a half to twelve and the weekly hours from 72½ to 60. In 1917 (c. 32) a clause was added, requiring employers to obtain a certificate of birth from persons under sixteen years before permitting them to work in a factory. The section which authorized the inspector to grant exemption from the requirements with regard to hours in case of accident, or exigencies of trade or emergency, was amended by a provision that the exemption should not apply to persons under seventeen years of age.

### *Nova Scotia*

The Nova Scotia Factories Act of 1901 (c. 1) forbade the employment of children under fourteen years of age in factories except under conditions stated in the act. They were permitted to be employed during the four months of July to October in the gathering and preparing of fruits and vegetables for canning or desiccating. The Lieutenant-Governor in Council was empowered to prohibit the employment of girls under eighteen years and boys under sixteen in factory work deemed to be dangerous or unwholesome.

[1] *Ibid.*, 1904, p. 19.

Children under fourteen and young girls under eighteen could not be employed in factories more than ten hours in one day or 60 hours in any week unless a different apportionment of the hours were made to give a shorter day's work on Saturday. Provision was made for not less than one hour for the noonday meal for children, young girls and women and a register of these employees was required.

As in the early Ontario legislation the factory inspector, subject to regulations of the Lieutenant-Governor in Council, might permit longer hours in case of accident, occurrence beyond the control of the employer or when the exigencies of the trade required. In no case could children, young girls or women be employed before 6 a. m. or after 9 p. m. and the maximum hours were fixed at 12½ in the day and 72½ in any one week. The exemption was limited to 36 days in the year, including overtime, and provision was made for an evening meal during the exemption period when the employment continued after 7 p. m. The usual clauses with regard to the posting of the particulars of the exemption and the recording of the hours worked during the exemption period were included.

In 1909 (c. 36) it was made unlawful to employ boys and girls under fourteen years of age in the four months of July to October in the gathering and preparing of fruits and vegetables for canning for more than eight hours in any one day or more than four hours on Saturday. These hours were also applied to boys and girls under sixteen years employed in factories and the maximum daily hours for young girls and women were fixed at nine.

It was also provided that the exemptions from the conditions of the act as to hours which the inspector was authorized to grant in the case of children, young girls and women should no longer apply to children. An unsuccessful effort was made by employers to secure the repeal of this law.[1]

[1] *Trades and Labor Congress*, 1910, p. 29.

The limitation of the daily hours of women employed in factories to nine was withdrawn by a clause in the Statute Law Amendment Act of 1910 (c. 17).

In 1912 (c. 56) a section was inserted in the Factories Act requiring employers to secure a certificate of birth or an affidavit proving age before permitting a person under the age of sixteen to work in a factory.

### *New Brunswick*

The New Brunswick Factories Act was passed in 1905 (c. 7) after a commission had been authorized in 1904 (c. 14) to which was assigned the revision of the bill before the legislature "since great differences of opinion had been expressed in regard to some of its provisions." The act applied only to factories in which ten or more were employed and included bakehouses and laundries. Lobster, fish or fruit canneries outside of cities or towns were expressly excluded from its application.

No child under fourteen years could be employed in any factory except in special cases authorized in writing by the inspector. The Lieutenant-Governor in Council was empowered to prohibit the employment of girls under eighteen years and boys under sixteen in factory employment deemed to be dangerous or unwholesome. The hours for young girls from fourteen to eighteen and for women were fixed, as at this time in Nova Scotia, Quebec and Ontario, at ten in the day and 60 in the week. As in the legislation of the other provinces the inspector could allow longer hours in case of accident, emergency or custom for 36 days in the year. During this period the daily hours could not exceed 13½ and the weekly hours 81, nor could work begin before 6 a. m. nor continue after 10:30 p. m. Young girls could not clean machinery in motion and children could not be employed in the management or control of an elevator.

In 1912 (c. 40) the section which prohibited the employment of children under fourteen in factories except in special cases authorized by the inspector was repealed and instead it was forbidden to employ children in or in connection with any manufacturing or mechanical establishment or to allow them to work except in special cases authorized by the inspector.

The factory inspector was authorized to demand from any employer the names of all children under sixteen years of age in his employ in the cities and towns of the province and to require the production of a birth record, baptismal record, passport, or age certificate of such children. Penalties were provided for employers and parents violating this provision and parents were also penalized for the presentation of false birth records.

In 1920 (c. 54) the New Brunswick Factories Act was consolidated and amended. The clause which provided that the act should not apply to canneries "outside of cities and towns" was changed to read "within the Province." The Workmen's Compensation Board was given the administration of the act. In its new form the act omitted the provision that children under fourteen years of age could be employed in manufacturing establishments in special cases authorized in writing by the inspector. The section which provided that employment in factories, the work of which was deemed to be dangerous or unwholesome, might be forbidden for girls under eighteen and boys under sixteen, was changed with regard to boys to apply only to those under fourteen. The provisions of the 1905 act as to hours were continued.

### *British Columbia*

The British Columbia Factories Act of 1908 (c. 15) which applied to factories employing five or more persons, forbade the employment of boys under fourteen years of

age and girls under fifteen, except in canning fish and the work incidental thereto and in fruit packing. Children could be employed in these lines only during the time of the runs of fish and the fruit seasons and at these times the limitations upon hours of labor were not to apply. The Lieutenant-Governor in Council could prohibit the employment of girls under eighteen and boys under sixteen in factories, the work of which was deemed dangerous or unwholesome. The act forbade the employment of young girls over fifteen years and of women for more than eight hours in one day or 48 hours in any week unless there were a different apportionment of the hours to give a shorter day on Saturday. An hour was set aside for the noon-day meal. As in the earlier legislation in other provinces the inspector was authorized to grant exemptions from the provision as to hours. Under the exemptions no woman or young girl could be employed before 7 a. m. nor after 8 p. m. and the hours for these workers could not exceed nine in the day or 54 in the week. The period of exemption was limited to 36 days in the year, overtime included. Provision was also made for an evening meal when employment continued after 7 p. m. As in the earlier laws the employer was required to post a notice covering the exemption and to keep a record of the hours worked by young girls and women as well as a register of these workers.

The scope of the act was enlarged in 1915 (c. 25) to apply to factories employing three or more, instead of five or more as in 1908, and in 1919 (c. 27) laundries were brought within the provisions of the act. In 1923 (c. 12) the definition of child was changed from a boy under fourteen and a girl under fifteen to "a male or female under the age of fifteen years."

*Saskatchewan*

The Saskatchewan Factories Act of 1909 (c. 10), which applied only where more than five persons were employed, provided that no child under fourteen years should be employed in a factory and that no youth between fourteen and sixteen, young girl between fourteen and eighteen, or woman should be employed in a factory more than eight hours in any day or 45 in any week. Employment for these workers could not be continued later than 6.30 p. m. unless a special permit were given in writing by the inspector. The usual hour for a meal at noon was also provided. Following the legislation in other provinces the inspector could permit longer hours for women and young people over fourteen years in case of emergency but in such case they could not begin earlier than 7 a. m., nor continue later than 10 p. m. nor exceed 12½ hours per day or 72½ per week. As in the earlier legislation of other provinces these longer hours were permitted for only 36 days in the year, overtime included. The usual provision was made for an evening meal during the period of the exemption when the employees were kept later than 7 p. m. and it was also required that the particulars of the exemption and a statement of the hours during which the young persons and women could be employed should be posted in the factory. Employers were required to keep a record of the hours worked by young persons and women during any such period and a register of these workers. The Lieutenant-Governor in Council was empowered to prohibit the employment of young persons in factories where the work was dangerous or unwholesome.

The definition of "factory" was changed in the session of 1910-11 (c. 41, s. 6), to make it apply to places where more than three persons were employed, instead of five as formerly, and the maximum hours for young persons and women were increased from eight to nine per day and from

45 to 50 per week. This maximum week of 50 hours was reduced to 48 by a law of 1919-20 (c. 10). As before, employment could not continue later than 6.30 p. m. without a special written permit from the inspector. A provision was added that no one under sixteen should operate any passenger elevator.

A further restriction on the labor of young persons was made by an amendment of 1920 (c. 66), which changed the definition of child and provided that no boy under fourteen or girl under fifteen (formerly fourteen) could be employed in any factory.

### *Alberta*

In 1911 the trade unions in Alberta began to make the prohibition of child labor an important plank in their program [1] but legislation was not passed until 1917 (c. 20). The Factories Act, which applied to shops (including bakeshops), offices and office buildings in cities and towns having a population exceeding 5,000 and to all factories (including laundries) in the province except those employing five persons or less and using only manual power, forbade the employment of children under fifteen in any of these establishments. No one could be employed on day shift earlier than 7 a. m. or later than 6 p. m. and on night shift the hours could not exceed eight, and no one could work on more than one shift in the day. The inspector was empowered to permit employment for a longer period for special reasons of trade or accident. Employers were required to keep a register of all employees.

In 1918 (c. 32) it was provided that no female over fifteen years of age could be employed in any factory, shop, office or office building between 11 p. m. and 7 a. m. except by written permission of the inspector and the section which

[1] *Trades and Labor Congress*, 1911, p. 22; 1912, p. 29; 1915, p. 44.

authorized the inspector to grant exemptions from the statutory hours for reasons of trade or accident was extended to include "war production necessities." This amendment also struck out the clause designating a factory as a place where five or more persons were employed and the clause which exempted shops where only members of the employer's own family were employed from the provisions of the act.

### CHILD LABOR IN SHOPS

#### *Ontario*

The Ontario Shops Regulation Act of 1888 (c. 33) required that no young person (boys under fourteen years and girls under sixteen but not including any person usually employed as a driver of a delivery) should be employed in or about a shop (any retail or wholesale shop, store, booth, stall or warehouse in which assistants are employed for hire) longer than 74 hours, including mealtimes, in any week, the term "week" being defined as the period between midnight on Sunday night and midnight on the succeeding Saturday night. The daily hours including mealtimes, were limited to fourteen on Saturday and to twelve on any other day. A different apportionment of the hours was permitted however to give a shorter day's work on some other day of the week. One hour was allowed for a noonday meal and 45 minutes for an evening meal, between five and eight o'clock, when the work continued later than seven o'clock. The act stated that young persons could not work in a factory and later on the same day in a shop except to complete in the whole day's work the number of hours permitted by the Factories Act. It was required that a notice of the legal hours for young persons should be exhibited in a conspicuous place in shops where young persons were employed. Penalties for contravention of the act were pro-

vided for both employers and parents and it was stated that if in the opinion of the court the young person was apparently of the age alleged by the informant the defendant should be required to prove the contrary.

The Shops Regulation Act of 1888 was repealed in 1897 (c. 51). According to the new law no person under ten years of age could be employed in any shop and no child under fourteen years, young girl or woman could be employed in or about a shop before seven or after six o'clock on any day of the week other than Saturday or the day next before a statutory holiday. On Saturday or the day before a statutory holiday the hours might continue until 10 p. m. and on one other day in the week work was permitted until 10 p. m., but in that case the worker could not be employed after 6 p. m. on the Saturday of that week. An hour was set aside for a meal at noon and 45 minutes for an evening meal if the employment continued after 6 p. m. All these restrictions were removed during the Christmas season, it being stated that "nothing in this section contained shall apply or be enforced as to any shop from the 14th day of December to the 24th day of December, inclusive, in each year." The provision in the law of 1888 that no child, young girl or woman should be employed in a shop who had previously on the same day been employed in a factory for the maximum number of hours permitted by the Factories Act was reenacted. Employers were also required to keep a register of the name, age and place of residence of every child, young girl and woman employed. The act stated that when any owner, occupier or tenant let out work to be done on the premises by any other person, any child, young girl or woman employed on the work should be taken, for the purposes of the act, as in the service of the owner, tenant or occupier.

In 1904 the Trades and Labor Congress expressed the

view that the minimum age of fourteen years established by the Ontario Factories Act for factory workers should apply also to employees in shops [1] and in 1908 (c. 58) the minimum age for shop employees was advanced from ten to twelve years. A clause was added that no child could be employed in any shop during school hours unless he had furnished the employer with a certificate issued in accordance with the provisions of the Truancy Act, permitting his absence from school. The employer was required to keep such certificates on file and to produce them whenever called for by the inspector.

The Shops Regulation Act was consolidated with the Factories Act in 1913 (c. 60) and since that time there has been but one change in the legislation as regards shops. An act of 1921 (c. 76) prohibited the employment of children under fourteen years in shops except "where only members of the employer's own family dwelling in a house to which the shop is attached are employed at home." This law also provided that children could not be employed in shops in contravention of the provisions of the Adolescent School Attendance Act.[2]

### *Manitoba*

The child-labor provisions of the Manitoba Shops Regulation Act of 1888 (c. 32) were identical with those of the Ontario act of the same year, outlined above. A Bake Shops Act was passed in 1898 (c. 2) but no child-labor sections were included until 1916 (c. 5), when it was provided that no person under the age of fourteen years could be employed in any bakeshop.

A law of 1916 (c. 100) permitted the employment of any boy over thirteen years and under fourteen in or about

[1] *Trades and Labor Congress*, 1904, p. 42.

[2] *Cf. infra*, p. 359.

a wholesale or retail store for not longer than two hours on school days or eight hours on school holidays. The law also provided that any child under fourteen might be employed eight hours in a day or 48 hours in any week if a certificate were presented under the provisions of the School Attendance Act relieving the child from school attendance and also a certificate from the Bureau of Labor sanctioning the employment of the child as necessary in the circumstances and not harmful. The law forbade the employment of any boy over fourteen years and under seventeen, girl over fourteen years and under eighteen or woman in a shop longer than fourteen hours in the day or 60 in the week, except that drivers of delivery vehicles might be employed 66 hours. The inspector was empowered in case of emergency to give written permission for the employment of young persons and women to a maximum of 70 hours a week and these workers could also be employed from 8 a. m. to 10 p. m. on the day preceding a statutory holiday and during the period between December 14 and December 24, both inclusive. The provisions of the legislation of 1888 with reference to the time for noon and evening meals were reenacted and also the clauses requiring the posting of the hours for young workers.

Premises used in connection with messenger service were added to the definition of shop and the provisions were applied to workers in offices in 1917 (c. 48). It was provided also that the inspector's authority to permit a maximum week of 70 hours in an emergency could be exercised only in the case of persons sixteen years of age and over. A section was added requiring employers to obtain a birth certificate or a signed statement of the child's age before permitting a child under sixteen to work in a shop or office.

### *Nova Scotia*

In Nova Scotia a law of 1895 (c. 17)—"An act to regulate the closing of shops and hours of labour therein for children and young persons"—also followed the Ontario legislation of 1888, outlined above, the only difference being that the maximum weekly work period was fixed at 72 hours, instead of 74 as in Ontario. The school attendance legislation of the province had forbidden the employment of children under thirteen years in mechanical, manufacturing or mercantile establishments.

In 1909 (c. 36) the hours for young persons employed in shops were considerably reduced. Under the new law a young person could not be employed for a longer period than eight hours per day, exclusive of mealtime, nor for more than four hours on any Saturday. One hour was set aside for a noonday meal on every day on which the employment continued for more than four hours. The sections with regard to the hours of labor of young persons in shops were embodied in the Children's Protection Act without change in 1912 (c. 4).

In 1915 under the compulsory school attendance legislation of the province the employment of a child under sixteen years in any business from 9 a. m. to 3.30 p. m. on any school day was forbidden unless he possessed a certificate that he had passed a satisfactory examination in grade seven of common school work.

### *British Columbia*

The Shops Regulation Act of British Columbia of 1900 (c. 34) established considerably shorter hours for young persons employed in wholesale or retail shops than the legislation of Ontario, Manitoba and Nova Scotia. The British Columbia act prohibited the employment of boys and girls under sixteen years of age in shops for more than 66½

hours, including mealtime, in any week or for more than thirteen hours on Saturday. The usual daily hours were limited to eleven although a different apportionment of the weekly hours was permitted to give a shorter day's work on some other day of the week. The provisions as to time for meals and posting of the hours of work were identical with the earlier acts in other provinces.

Sections applying to bakeshops (defined as establishments for the manufacture or sale of confectionery or food products made from flour) were added in 1901 (c. 49). These forbade the employment in bakeshops of children under fourteen years of age and the employment of persons under eighteen between 9 p. m. and 5 p. m. The general provision as to hours in bakeshops in this law required permission from the inspector for the employment of any person more than twelve hours a day and 60 hours a week. These provisions are contained in the revision of 1924 (c. 232).

### *Other Provinces*

In Alberta the child-labor provisions with regard to retail stores are identical with those governing factories.[1] The school attendance legislation of New Brunswick forbids the employment of children under thirteen years in cities and towns in manufacturing, mechanical and mercantile establishments.[2]

## CHILD LABOR IN STREET TRADES AND AMUSEMENT PLACES

### *Ontario*

The Ontario Legislature in 1893 (c. 45) by "An act for the prevention of cruelty to and better protection of children" prohibited the employment of boys under fourteen and girls under sixteen in any street or in any premises licensed for the sale of intoxicating liquors for the purpose

[1] *Cf. supra*, p. 337. [2] *Cf. infra*, p. 368.

of singing, playing or performing for profit, or offering anything for sale, between 10 p. m. and 6 a. m. It was also forbidden to employ any child under ten years of age at any time for the purpose of singing, playing, performing for profit or offering anything for sale in any street or in premises licensed either for the sale of intoxicating liquor or for public entertainments, or in a circus or amusement place which charged admission. However, the police magistrate or the head of the municipal council could grant a license for the employment of any child over seven years of age as a performer in places of public amusement for such time and such hours of the day and under such restrictions as he might think fit, if he were satisfied that the child would not suffer injury thereby. The municipal council was required to assign to some officer of the municipality or other person the duty of enforcing the conditions of any license and such persons were given the same powers in inspecting of places of public entertainment employing children under license as inspectors of factories under the Factories Act.

In 1897 (c. 15) the minimum age at which children might be employed as performers in public places or in selling goods was advanced from ten years to fourteen for boys and sixteen years for girls but the powers of the municipal authorities to grant licenses for the employment of children over seven years were continued without change. The consolidating act of 1908 (c. 59) forbade the employment of any child in this way who was "actually or apparently" under sixteen years of age and the municipal officials were permitted to grant licenses only to children over ten years of age. In the section prohibiting the employment of children under the legal age between 10 p. m. and 6 a. m. the reference to premises licensed for the sale of intoxicating liquors was omitted and "public place" was substituted.

These provisions were reenacted in the Children's Pro-

tection Act of 1913 (c. 62) and a section was added which forbade girls under sixteen years and boys under ten to engage in or be licensed to engage in any street trade or occupation. The prohibition of the employment of children as performers or in offering anything for sale between 10 p. m. and 6 a. m. was changed to read between 9 p. m. and 7 a. m.

In 1919 (c. 65) the minimum age at which boys could be employed in street trades was advanced from ten years to twelve. The prohibition of performances by children "in any circus or other place of public amusement to which the public are admitted by payment" was made more specific by the inclusion of the word "theatre." This word was also inserted in the section authorizing the head of the municipal council to grant licenses for the employment of children over ten as performers in public entertainments. An amendment of 1922 (c. 92) added that no child should be employed in any street trade between ten o'clock in the afternoon and six o'clock in the forenoon of the following day.

*Manitoba*

The Children's Protection Act of Manitoba, passed in 1898 (c. 6), authorized the apprehension of boys under fourteen years and girls under sixteen for certain offences but no reference was made to their employment. In 1907 (c. 6) children under the age of sixteen were brought within the scope of this law and it was provided that any child could be apprehended who was "a habitual truant from school, or habitually wanders about the streets or public places during school hours without any lawful occupation or employment." In 1909 (c. 8) the act was further amended by adding among the children who might be apprehended "any child who habitually hawks or habitually sells articles in the streets or public places during school hours."

The amending act of 1910 (c. 13) made it unlawful for children over twelve years and under sixteen to sell newspapers or other articles in the streets or public places of any city, town or village during school hours without a license from the Superintendent of Neglected Children or without wearing a numbered badge procured from that official. The Superintendent of Neglected Children before issuing any license was required to record the child's age, the names and addresses of the parents, the father's occupation, the school and church attended by the child, if any, the name of the clergyman of the church, the reasons for the necessity of the employment of the child during school hours together with evidence satifactory to him of such necessity and of the child's age. He had also to record that the child was of normal development physically and able to undertake the work. The officers of a Children's Aid Society and the police were authorized to apprehend without warrant any child under the age of twelve years engaged in selling newspapers or other articles or distributing advertising matter in any street or public place during any hour of the day or night, or any child between twelve and sixteen years found selling articles during school hours without a license, or after 9 p. m.

In 1911 (c. 6) it was made illegal to employ habitually any child under twelve years between 9 p. m. and 6 a. m. or to employ any child under sixteen years in any occupation likely to be injurious to his life, limbs, health, education or morals. The Children's Act was amended in 1914 (c. 19) by the addition of certain provisions regarding school attendance.[1] By a law of 1918 (c. 12) the act was made to apply to "any boy or girl actually or apparently under the age of sixteen years."

[1] *Cf. infra*, p. 373.

In 1917 (c. 69) the legislature provided for a Public Welfare Commission "charged with the duty of reporting on conditions affecting child-life within the province and of making recommendations in respect thereto." The commission recommended the consolidation of the laws of the province relating to children and the establishment of a department of public welfare and "An act respecting the welfare of children" was passed in 1922 (c. 2), and proclaimed in force on September 1, 1924. It provided that any constable might apprehend and take to a detention home as a neglected child any child under twelve found

> peddling or selling newspapers or other articles or distributing advertising matter for hire in any street or public place at any time during day or night, or who, being under sixteen years of age, is employed anywhere between the hours of 10 p. m. of one day and 6 a. m. of the following day . . . or who, being under the age of fourteen years, habitually hawks or peddles or sells articles in the streets or public places during school hours or after 9 p. m.

Municipal councils were empowered to pass by-laws regulating and controlling and licensing children engaged as express or dispatch messenger, vendors of newspapers and small wares, shoe shiners, and pin boys in bowling alleys. No licenses were to be granted to girls nor to boys under twelve years, nor to boys from twelve to fourteen unless written permission from their parents were presented. Licensees could not engage in the occupation for which they were licensed after 8 p. m. during the months of December, January and February nor after 9 p. m. throughout the rest of the year nor during school hours.

It was made unlawful "to employ habitually any child under the age of fourteen years between the hours of 9 p. m. and 6 a. m. and any child under sixteen years in any occu-

pation likely to be injurious to his life, limbs, health, education or morals."

The section prohibiting the habitual employment of children under fourteen years between 9 p. m. and 6 a. m. was extended in 1924 (c. 7) to apply to children under eighteen. With respect to public entertainments, circuses and other public amusements the director of the Department of Child Welfare was authorized to grant licenses for the employment of children over ten years of age under such restrictions as he might think fit and if he were assured that the children would receive kind treatment and that they could take part without injury. The licenses could be changed or revoked at any time.

*Saskatchewan*

The Children's Protection Act of Saskatchewan—1908 (c. 31)—like the Manitoba law of 1907, authorized the apprehension without warrant of any child apparently under the age of sixteen years "who is an habitual truant from school or habitually wanders about the streets or public places during school hours without any lawful occupation or employment." A law of the session of 1908-9 (c. 15, s. 4) defined child in this legislation as "a boy or girl apparently or actually under the age of sixteen years."

A law of the second session of 1917 (c. 13) authorized any officer, peace officer, probation officer, constable or policeman to apprehend and take to a place of safety any child employed between 10 p. m. and 6 a. m. This act also empowered municipal councils in cities, towns and incorporated villages to pass by-laws for the regulation, control and licensing of children engaged in street trades on the same terms as the law of Alberta, passed in 1911-12.

The employment of child performers under sixteen years was regulated by this law. It was stated that any person

should be guilty of an offence under the act if he caused: (1) a child to be in a public place for the purpose of begging or receiving alms whether under the pretense of singing, playing, performing, offering anything for sale or otherwise; (2) to be in a public place performing for profit or offering anything for sale or to be employed between 10 p. m. and 6 a. m.; (3) to be at any time in any circus or place of public amusement to which the public was admitted by payment for the purpose of performing or offering anything for sale. The mayor of any city or town and the overseer of a village were authorized to grant licenses for the employment of children as performers in places of public amusement if it were shown that proper provision for their health and kind treatment had been made, the employment to continue for such hours between 10 p. m. and 6 a. m. as the municipal authority might think fit. The employment was not to exceed seven hours in any day of 24 hours and only children over ten years of age, who in the mayor's opinion were fitted to take part in the entertainment without injury, could be so employed. The license might at any time be varied, added to or revoked. Municipal councils were required to assign some person (the chief constable until the appointment of some other person) the duty of seeing that the licenses were complied with and such person was given powers of inspection over places in which licensed children were employed.

The granting of licenses to working children was provided for in 1924 by sections inserted in the City Act (c. 13, s. 7) and in the Town Act (c. 14, s. 8). These provisions were the same as those enacted in Manitoba in 1922 [1] and provided that city and town municipal councils might pass by-laws for regulating and controlling and licensing children

[1] *Cf. supra*, p. 347.

engaged as express or dispatch messengers, vendors of newspapers and small wares, and bootblacks. No license could be granted to a girl of any age, to a boy under twelve years and to a boy of twelve and under fourteen years unless he presented written authority from his parent or guardian. No licensee could engage in any occupation for which he was licensed within the limits of the municipality after 8 p. m. during December, January and February, or after 9 p. m. throughout the remainder of the year, or during school hours.

*Alberta*

The Children's Protection Act of Alberta, passed in 1909 (c. 12), imposed penalties for causing children (boys or girls actually or apparently under sixteen years of age) to be neglected; that is, for procuring children to beg in any public place or receive alms, whether under the pretense of performing or offering anything for sale or otherwise; to be in any public place for the purpose of singing, playing, or performing for profit or offering anything for sale between 10 p. m. and 6 a. m. or to cause children, except by permission, to be in any circus or other place of public amusement to which the public were admitted by payment for the purpose of performing for profit or offering anything for sale. If it could be shown that proper provision had been made to secure the health and kind treatment of child performers in places of public amusement, the mayor of any city or town or the chairman of any village council could grant a license for the employment of any child over ten years of age in this way for such time and during such hours and under such conditions as he might think fit. The municipal council was required to assign some person to the duty of enforcing these conditions who should be given full powers of inspection.

At the second session in 1910 (c. 2, s. 23) the law was made to apply to children under seventeen years instead of sixteen as at first and the provision of the previous year which made it an offence to cause a child to be employed as a performer in any public place or to offer anything for sale between 10 p. m. and 6 a. m. gave way to a section that forbade entirely the employment of children during these hours. The power granted to the mayors of cities and towns and the chairmen of village councils to issue licenses for the employment of children for such hours as they might see fit was restricted. Children could be employed under such licenses "between 10 p. m. of one day and 6 a. m. of the following day, such employment not to exceed seven hours in any day of 24 hours."

In the session of 1911-12 (c. 4, s. 34) municipal councils in cities, towns and incorporated villages were given power to pass by-laws regulating under license the employment of children as express or dispatch messengers, vendors of newspapers and small wares and as bootblacks. Licenses could not be granted to girls, nor to boys under twelve years and boys from twelve to fourteen years could be licensed only if they presented written authority from their parents to make application. No child was permitted to engage in any occupation for which he was licensed within the limits of the municipality after 8 p. m. during the months of December, January and February or after 9 p. m. throughout the rest of the year or during school hours.

In 1916 (c. 3, s. 17) an amendment to the Children's Protection Act brought all children less than eighteen years of age under the protection of the law.

A Child Welfare Act, similar to the Manitoba act of 1922, was passed in 1925 (c. 4) replacing the act of 1909. Police officers might apprehend as "neglected" children under twelve years "found peddling or selling newspapers

or other articles or distributing advertising matter for hire in any street or public place at any time during the day or night;" children under sixteen employed between 10 p. m. and 6 a. m.; and children under fourteen habitually selling articles in the streets or public places during school hours or after 9 p. m. It was an offence under the act to cause children under sixteen years of age to beg in public "whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise;" to be in any public place for the purpose of singing, playing or performing for profit, or offering anything for sale; to be employed for hire between 9 p. m. and 8 a. m.; or to perform for profit at a circus or any place of public amusement, except under a special license from the Superintendent of Child Welfare. The same provisions as to the granting of licenses by municipal councils to working children were included as in Manitoba in 1922 and Saskatchewan in 1924.[1] The act was to come into force on proclamation.

*Quebec*

The first legislation in the province of Quebec with reference to employment of children in amusement places was embodied in an amendment to the Industrial Establishments Act in 1910 (c. 27). This provided that children under fifteen years of age should not be permitted to act or sing in theatres, halls for moving pictures or similar establishments. Educational institutions and entertainments for charitable purposes were exempted. A further amendment of 1919 (c. 50) required that children under sixteen should be able to read and write fluently before being employed in street trades and amusement places.[2] This amendment also provided that children should not be employed in street trades after 8 p. m.

[1] *Cf. supra*, pp. 347, 349.

### *Nova Scotia*

A Nova Scotia law of 1915 (c. 4)—"An act respecting compulsory attendance at school in cities and towns"—prohibited the employment of any child under the age of sixteen years in any business or street trade, or his accompanying any person engaged in any street trade, between 9 a. m. and 3.30 p. m. on any school day unless he had in his possession a certificate that he had passed a satisfactory examination in grade seven of common school work. Verbal changes for the better enforcement of the law were made in 1922 (c. 39).

### *British Columbia*

The first Children's Protection Act in British Columbia was passed in 1901 (c. 9). This empowered municipal councils to pass curfew regulations, which required children to be off the streets after certain hours and so indirectly regulated their employment. Mention should perhaps be made of the section in the 1918 (c. 36) act amending the Infants Act. This provided that any child apparently under the age of eighteen years might be arrested as a "neglected" child who was "found begging in any street, house or place of public resort, whether actually begging, or under pretext of selling or offering anything for sale."

### *New Brunswick*

Children's protection legislation began in New Brunswick in 1892 (c. 62) with "An act to prevent and punish wrongs to children." Amendments were made from time to time but apart from curfew regulations there was no regulation of child labor in street trades until 1919. In that year the Children's Protection Act (1919, c. 6) authorized the commissioner of the juvenile court to make regulations concerning the conditions under which boys and girls actually or apparently under sixteen years of age might engage in street trades, subject to the approval of the municipality.

### CHILD LABOR IN BARROOMS AND BREWERIES

Several of the provinces have passed legislation prohibiting the employment of children in the manufacture or sale of intoxicating liquors.

#### *Northwest Territories*

A section of the Liquor License Ordinance passed by the Northwest Territories in 1897 (no. 7) forbade the employment of any female, except a licensee or the wife of a licensee, or any male under eighteen years of age to dispose of intoxicating liquors.

#### *The Yukon*

The Yukon Territory in 1902 (no. 8) included the same provision in its Liquor License Ordinance.

#### *Quebec*

In 1905 (c. 13) Quebec added a provision to its License Law which forbade any male under eighteen years and any female, except the wife of a tavern-keeper, to act as a bartender.

#### *Nova Scotia*

Nova Scotia provided by legislation of 1906 (c. 55) for the protection of neglected children that any boy apparently under the age of fourteen years and any girl apparently under sixteen years employed in a brewery or in any place where intoxicating liquors were made, bottled or sold might be apprehended and brought before a judge as neglected. In 1912 (c. 4) the age for boys was advanced to sixteen years.

#### *Alberta*

When Alberta was established as a province in 1905 it continued under the provisions of the legislation of the Northwest Territories in this matter until 1907 (c. 9) when

the minimum age was advanced to 21 years. This legislation was repealed by the Liquor Act of 1916 (c. 4).

*Manitoba*

Manitoba provided in its Liquor License Act of 1908 (c. 26) that no bartender's license should be issued to any one not of the full age of 21 years. This legislation was repealed by the Manitoba Temperance Act of 1916 (c. 112).

*Saskatchewan*

The provisions of the ordinance of the Northwest Territories applied in Saskatchewan until 1908 (c. 14) when the employment of males under 21 years was prohibited. This act was repealed in 1917 (c. 23) by the Saskatchewan Temperance Act.

*New Brunswick*

In 1913 (c. 27) New Brunswick adopted legislation similar to that of Nova Scotia, permitting the apprehension of any boy or girl actually or apparently under sixteen years and employed in any place where intoxicating liquors were made, bottled or sold.

CHILD LABOR IN INDUSTRIAL UNDERTAKINGS

In 1921 (c. 19) British Columbia passed the Employment of Children Act which forbade the employment of boys under fourteen and girls under fifteen years of age in any industrial undertaking. Employers were required to keep a register of all employees under sixteen years of age. The act stated it should come into force on the enactment of similar legislation by the other provinces, but as yet none has responded.

As the foregoing pages show, several of the provinces—British Columbia, Manitoba, Ontario, Quebec and Saskatchewan—have inserted provisions in their factories, shops

and street trades legislation prohibiting the employment of children at night. British Columbia, however, passed in 1921 (c. 47) the Night Employment of Young Persons Act which prohibited the employment of young persons under eighteen years of age in any industrial undertaking between 8 p. m. and 7 a. m. The Lieutenant-Governor in Council was empowered to make regulations suspending the operation of the act where by reason of serious emergency the public interest demanded it or where the nature of the process required continuous work. But it was stipulated that the law should not be proclaimed in force before the enactment of similar legislation in the other provinces.

### CHILD LABOR ON SHIPS

By an amendment to the Canada Shipping Act enacted in 1924 (c. 12) the Dominion Government adopted the draft conventions passed by the International Labor Conferences at Genoa in 1920 and Geneva in 1921. This legislation forbade the employment of children under the age of fourteen years on board vessels and of young persons between fourteen and eighteen years as trimmers or stokers. Certain exceptions were permitted in each case. A medical certificate of fitness was required for the employment of any young person on board ship. The legislation came into effect January 1, 1926.

### COMPULSORY SCHOOL ATTENDANCE

#### *Ontario*

In 1871 (c. 33) the Ontario Legislature passed "An act to improve the common and grammar schools." It provided, under penalty, that every child from the age of seven to twelve years inclusive should attend school for four months in every year. Exemption was granted only on

grounds of poverty, ill-health or distance from school. In 1874 (c. 28) trustees were required to take steps to prevent non-attendance. They were to impose a special rate bill on parents for each child not attending school or to make complaint to the magistrate. In 1881 (c. 30) the school-leaving age was advanced to thirteen years and children were required to attend eleven full weeks in each of the two terms of the school year but it was provided that half of this compulsory period would be sufficient for children employed in factories. The compulsory period was increased to 100 days in each term by a law of 1885 (c. 49). The same exemption for children in factories was retained but a proviso was added that each such child should hold a certificate of certain standing from a public school inspector.

The Commissioners appointed by the Dominion Government to enquire into the working of mills and factories reported in 1882 that children under fourteen employed in factories were not required to attend school. With reference to the Ontario legislation of 1871 and 1874 they stated: "We were unable to find any place in which this act is enforced." [1]

The provisions as to compulsory education were transferred to a separate act in 1891 (c. 56)—"An act respecting truancy and compulsory school attendance." This law required all children between eight and fourteen years of age to attend school for the full term of the year except for specified reasons and no child under fourteen could be employed during schools hours unless exempted for the reasons mentioned. Justices of the peace were authorized to grant certificates relieving children from attending school for any period not exceeding six weeks in each term, if their services

[1] *Report of the Commissioners appointed to enquire into the working of Mills and Factories of the Dominion, and the Labor employed therein.* Sessional Papers (No. 42) 1882, p. 3.

were required "in husbandry or in urgent and necessary household duties or for the necessary maintenance of such child or of some person dependent upon him."

The Adolescent School Attendance Act, passed in 1912 (c. 77), authorized boards of high school trustees or boards of education in a city, town or village, urban boards of public school trustees and urban boards of separate school trustees to pass by-laws requiring the attendance of adolescents (young persons who had passed the high school entrance examination or completed the fourth form of the public school or its equivalent and who were under the age of seventeen years or who were not less than fourteen nor more than seventeen years) at day or evening classes established by such boards or at some other classes or school in the municipality. Exemption from attendance was allowed in certain cases. Persons who had in their employ adolescents to whom any such by-law applied were to give notice to the board, at such times as the by-law might indicate, of the hours during which any such adolescents were employed. Penalties were prescribed in certain cases.

This law was replaced in 1916 (c. 62) by the Adolescent School Attendance Act, under which boards of education were given authority to pass by-laws requiring adolescents (persons of either sex not more than seventeen years of age exempted from school attendance under the Truancy Act) to attend day or night classes arranged for by the school board or other classes or schools in the municipalities. Exemptions from attendance were provided for as before and this act gave the board permission to exempt from part or full-time attendance at night or day school.

The next legislation in this field was the Adolescent School Attendance Act, 1919 (c. 78). This law, which was to come into effect on proclamation, marked the determination of the provincial authorities to regulate the attendance of adoles-

cents instead of leaving the matter in the hands of the local boards, as provided in the earlier acts. Adolescents between fourteen and sixteen years of age were compelled to attend school for the full school term but they could be excused because of sickness or infirmity, or if they were employed on authority of a home permit or employment certificate or had passed the matriculation examination of an approved university or had completed an equivalent course of study to the satisfaction of the Department of Education, or were in attendance at some other educational institution approved by the minister. The conditions attached to the granting of home permits and employment certificates, the hours of attendance for adolescents between fourteen and sixteen years and for adolescents between sixteen and eighteen were set forth in the act.

An amending law of 1923 (c. 55) relieved adolescents whose parents or guardians resided in a rural school section from the obligation to attend school or to obtain home permits if their services were required in the households or on the farms of their parents or guardians.

The section with reference to attendance on part-time courses was to come into effect September 1, 1923, but this date was later postponed to September 1, 1925, when the entire act became effective.

### *British Columbia*

Sections on compulsory education were added to the Public Schools Act in 1873 (no. 8). These provided that the trustees of any school district should make by-laws, not to be enforced until approved by the superintendent of education for the province, requiring parents and guardians to cause to attend school children of such ages from seven to fourteen as might be fixed in the by-laws. Certain reasons were enumerated as sufficient excuse for non-attendance. Penalties were provided to enforce the by-law.

The provisions were amended in 1876 (no. 2) to require every child from seven to twelve inclusive to attend school, or be otherwise educated, for six months in every year. The same excuses for non-attendance were enumerated and penalties imposed for non-compliance.

These provisions were continued in the various consolidations of the Public Schools Act but in 1901 (c. 48) a clause was added providing that in city school districts children between the ages of seven and twelve years inclusive should attend school during the regular school hours on every school day, subject to the exemptions provided for. An amendment of 1905 (c. 44) changed the ages for compulsory school attendance from "seven to twelve years, inclusive" to "seven to fourteen years." In 1912 (c. 38) the requirement that children in city school districts should attend school regularly throughout the year was made applicable to rural municipal school districts in which the school trustees should so decide. It was made compulsory by an amendment of 1920 (c. 82, s. 29) for every child of the ages seven to fourteen inclusive, whether in city or country districts, to attend school regularly, subject to the exemptions provided in the earlier legislation. An amending law of 1921 (c. 56) made attendance compulsory for children over the age of seven years and under the age of fifteen. A section was added in 1922 (c. 64) providing that the consent of the board of school trustees of the district in which the offence was committed or of the superintendent of education of the province was necessary to prosecutions.

### *Prince Edward Island*

The first compulsory school attendance law in Prince Edward Island was passed in 1877 (c. 1, s. 90). Every person having control of a child between the ages of eight and thirteen years was required to send him to some public

school at least twelve weeks in the year, of which not less than six weeks had to be consecutive. Fines were imposed for non-observance of the law but exemption was granted if upon enquiry by the trustees or in a prosecution under the law it appeared that any child by reason of poverty could not be sent to school or could not be furnished with the means of education. Children who had been otherwise educated for a like period or had already acquired the branches of learning taught in public schools or whose bodily or mental condition made them unfit for school were not required to attend. The trustees were authorized to enquire into all cases of non-attendance, to ascertain the reasons therefor and to prosecute offenders.

By an amendment of 1917 (c. 10, s. 2) the ages of compulsory school attendance were fixed at from eight to fourteen instead of eight to thirteen, as in the original act. The minimum attendance period of twelve weeks was changed to 30 weeks for the towns of Charlottetown and Summerside and to 20 weeks for other localities. The ages for compulsory school attendance were reduced in the consolidating act of 1920 (c. 6), the Public School Act; eight to fourteen years in the 1917 act became seven to thirteen. At the next session, 1921 (c. 3), a new section was substituted. Every person having under his control a child between the ages of seven and thirteen was required to send him to school at least 60 per cent of the days on which the school was in operation under penalty of a fine for neglect. Exemption was granted however for the same reasons as enumerated in the 1877 act. A new proviso was added that when a person had been convicted no further prosecution could be brought against him during the same school year for a default in respect of the same child without the consent in writing of the chief superintendent of education.

*Nova Scotia*

The Nova Scotia Legislature in 1883 (c. 17) passed "An act to secure better attendance at public schools" which provided that when the qualified voters present at an annual school meeting should so vote the provisions of this act should be made operative in the school section. The school trustees were then required before the next November to prepare lists of the names and ages of all children in the school district between seven and twelve inclusive and the names of their parents or guardians. As soon as possible after the first of the following June they had to impose upon the parents or guardians a fine of two dollars for each child who had been absent from school throughout the year and a pro rata fine for each child who had not attended the minimum period of 80 days. Parents or guardians were to be exempted from this penalty in the case of children being educated otherwise than in public schools or prevented from attendance by delicate health or because they resided over two miles from school, or for other sufficient reasons.

In 1888 (c. 46) a City Compulsory School Attendance Act, which applied only to the city of Halifax, was enacted. This law required every child between the ages of eight and fourteen years to attend school during the regular school hours every day for at least six months in each year, unless his physical or mental condition rendered this impracticable. Fines were imposed for failure to cause children to attend school. The employment of any child under fourteen in Halifax during school hours was forbidden unless he had attended some public school or had been otherwise instructed by a qualified teacher for at least six months preceding his employment in every year in which he was employed. The child was required to deliver to the employer a certificate as to such attendance or instruction. The board of school com-

missioners was charged with the duty of examining into the situation of children employed in manufacturing and other establishments in May and November in every year and at such other times as might be deemed necessary and of prosecuting all persons found violating the law.

Certain amendments to this act were made in 1892 (c. 61) when children between the ages of seven and fourteen, instead of eight and fourteen as in the law of 1888, were required to attend school and the minimum period of attendance was changed from six months to 120 days. Exemption from attendance could be granted by the school board to any child of twelve who had passed a satisfactory examination in grade seven of the common school and to any other child over thirteen who had attended school 60 days during fourteen consecutive weeks in the preceding year, if necessity required him to work and the board were satisfied of that necessity.

With regard to the employment of children it was provided that no child under fourteen years could be employed during school hours unless he had attended school or been otherwise instructed for at least the six months preceding and presented to the employer a certificate to this effect or that he had passed grade seven. Any child between the ages of thirteen and fourteen years who had attended school 60 full days during fourteen consecutive weeks in the preceding year and could deliver to the employer the secretary's certificate of such attendance might be employed but no child under thirteen could be employed at any time in mechanical, manufacturing or mercantile establishments.

The consolidating act of 1895 (c. 1) in sections on "Attendance" repeated the provisions of the 1883 act but a new part, the Towns' Compulsory Attendance Act, applied to incorporated towns in the province. It defined child as a boy or girl between six and sixteen years, instead of between

seven and fourteen as in the 1892 act applying to Halifax. As in that act attendance was required for at least 120 days in each school year and exemption could be given by the secretary of the school board to any child over twelve who had passed grade seven and any other child over thirteen who had attended school 60 days during fourteen consecutive weeks in the preceding year, if necessity required him to work. The same provisions held as to employment in Halifax except that they applied to children under sixteen, rather than under fourteen, and to children between thirteen and sixteen, rather than between thirteen and fourteen. As in Halifax, no child under thirteen could be employed at any time in certain establishments. This act, as the 1888 and 1892 acts, required the school board to make investigation as to children employed and to prosecute persons employing them contrary to the law.

The legislation with respect to the city of Halifax was consolidated in 1899 (c. 56) in the City Compulsory School Act and required all children between six and sixteen years to attend school regularly unless excused by the board. Exemption could be given under the same conditions as in the 1895 act for children over twelve and children over thirteen, if they needed to work. It was stated that the law did not apply to children between fourteen and sixteen actually at work. The same provisions as to employment of children were included as in the 1895 act. In the revision of 1900 the provisions of the 1895 act with reference to school districts were incorporated in the Education Act (c. 52) and those with reference to towns in the Towns' Compulsory Attendance Act (c. 55).

The provisions of the Halifax act of 1899 were applied to the town of Dartmouth at the session of 1903-4 (c. 60) and to Sydney in 1907 (c. 82) except that the ages specified for Sydney were eight to sixteen rather than six to sixteen,

as in Halifax and Dartmouth. In the consolidation of the Education Act in 1911 (c. 2) the same provisions were included as in the 1883 and 1895 acts with reference to the adoption of compulsory school attendance in school districts and the duties of school trustees in listing children and in fining parents for non-attendance of their children.

The Cities' and Towns' Compulsory Attendance Act of 1915 (c. 4) consolidated the existing legislation on compulsory attendance for cities and towns. A new requirement made a certificate of physical fitness for the work necessary as well as the employment certificate. A part was added to this act in 1917 (c. 73) applying to every school section not a city or town the same regulations as in the earlier acts except that compulsory attendance was required up to fourteen years rather than twelve.

An amendment of 1923 (c. 52) provided that in the granting of employment certificates the certificate should be good only for employment with the employer mentioned and for the work specified in the certificate and further that the certificate should be issued only on condition that the child should attend evening technical or other classes approved by the board. With regard to compulsory education in school sections other than cities and towns, attendance could be required from six to sixteen, as in cities and towns, rather than from seven to fourteen as formerly, if so decided by a majority vote at the annual school meeting. School boards or trustees were empowered in 1924 (c. 1, s. 9) to pass a resolution requiring parents or guardians of children in cities and towns to pay one cent for each half day's absence unless the children were exempt from attendance.

### *Northwest Territories*

The School Ordinance, as printed in the revised ordinances of the Northwest Territories, 1888 (c. 59), required that

in every school district where there were at least fifteen children of school age, resident within a radius of one and a half miles from the schoolhouse, the trustees should keep the school open for the whole year and if there were ten children or more in the district the school was to be kept open at least six months. Persons in control of children between the ages of seven and twelve were required to send them to school for at least twelve weeks in each year, of which at least six weeks had to be consecutive. Penalties were imposed for failure to comply with these provisions unless there was a reasonable excuse, according to a specified list.

The requirement that trustees should keep school open for children " of school age " was amended in 1896 (no. 2) to read " between the ages of seven and fourteen years " and the six consecutive weeks of attendance for children between seven and twelve was changed to eight consecutive weeks. The minimum period of attendance was extended in 1898 (no. 29) from twelve weeks to sixteen. Up to this time the compulsory attendance regulation had applied to children " between the ages of seven and twelve years " and the word " inclusive " was added by this ordinance.

### *The Yukon*

The Yukon Territory provided for compulsory school attendance in 1902 (no. 27). In every district where there were at least fifteen children between the ages of seven and fourteen inclusive, within a radius of one mile from the schoolhouse, the school board was required to keep school open the whole year and for at least six months when there were ten children between these ages. Every parent and guardian was required, under penalty, to send children between seven and twelve inclusive to school for at least sixteen weeks in each year, at least eight of which were to be consecutive. The usual reasons for non-attendance were allowed. These provisions have continued unchanged.

*New Brunswick*

As early as 1877 teachers in New Brunswick were required to report annually to the trustees the attendance of the pupils enrolled and the Schools Act of 1900 imposed upon them the duty of forwarding to the inspector of schools information as to the number of children of school age in the district and such information as to absentees as might be "the means of effecting an increase in the average attendance of pupils at the public schools of the province." It was not until 1906 (c. 13) that the Compulsory School Attendance Act was passed. A resolution that the provisions of part one of the act should be made operative in the school district had to be submitted at each annual school meeting until passed. When a majority of the voters present voted in favor of the resolution it became the duty of the school trustees to make lists of the names and ages of all children in the district between seven and twelve years of age and of their parents or guardians, and to collect two dollars for each child who had not attended any part of the year and pro rata fines for each child who had attended less than sixty per cent of the school term. Exemption from payment was granted in certain cases.

As to cities and incorporated towns, a resolution providing that the provisions of part two of the act should be made operative in that city or town had to be submitted annually until adopted. Every child between six and sixteen was required to attend school for a minimum period of 120 days in each school year but children over twelve years who had passed a satisfactory examination in grade seven and children over thirteen who had attended school sixty days during fourteen consecutive weeks in the preceding year were not compelled to meet this standard if it were necessary for them to work and the secretary of the board granted permission.

The board was charged with the duty of instituting proceedings against all persons who failed to comply with the law.

As to employment of children, the act stipulated that no child under sixteen years of age should be employed in a city or town during the school hours of any school day unless he had attended a public school or an approved private school, or had been otherwise instructed by a qualified teacher in certain subjects for at least six of the twelve months preceding the employment. The child was required to deliver to the employer a certificate of this attendance or that he had passed a satisfactory examination in grade seven of common school work The employment of children under thirteen years in manufacturing and other establishments was forbidden under penalty. The school board was required to examine into the situation of the children employed in all such establishments at the beginning of each school year and at such other times as they might deem necessary, and to prosecute all persons violating these provisions of the law.

Amendments were made to this law in 1908 (c. 24) with reference to the cities of St. John and Fredericton and the towns of Chatham and Newcastle. In these municipalities the compulsory attendance provisions applied to children between the ages of six and fourteen and required attendance throughout the term unless the child's bodily or mental condition made such attendance impossible.

The law of 1906 with regard to compulsory attendance of children in cities and towns was stated, in 1911 (c. 34), not to apply to any child between fourteen and sixteen years if the board of school trustees certified he had attended school regularly " for a reasonable period previous to the granting of said certificate " and was reasonably proficient in certain specified subjects.

*Saskatchewan*

When the province of Saskatchewan was formed in 1905 the School Ordinance of the Northwest Territories of 1901 [1] continued in force until amended in 1909 (c. 28). This act provided that the school board in every rural school district where there were at least twelve children between the ages of seven and fourteen years inclusive resident within a distance of one and a half miles from the schoolhouse, should keep the school open at least 190 teaching days in the year, except during the first year in newly organized school districts. In rural districts with at least ten children of the ages specified, school was to be kept open not less than 140 teaching days. Trustees in town and village districts were instructed to keep the schools open at least 210 teaching days. If the board of any district deemed it inadvisable to keep the school open as provided by law they were required to submit a statement of the facts to the Minister of Education, who was empowered to make any order with respect to the situation he might think fit.

Children between the ages of seven and thirteen inclusive, resident in a rural district or in portions of a town or village district outside the limits of the municipality, were required to attend school for at least 100 teaching days, of which at least 60 were to be consecutive, but for children resident in a town or village district and within the limits of the municipality the period was set at 150 days, of which at least 100 were to be consecutive. For children resident within the limits of any city, town or village municipality the consecutive days' attendance were to commence not later than March first and for children residing outside any such municipality, not later than April fifteenth, or such later date as the school might open for the year. In the session of 1912-13

[1] *Cf. supra*, p. 366.

(c. 35) the act was amended to apply to children "over seven years of age and under fourteen." A section in 1913 (c. 49) forbade the parent or guardian of any child under the age of fourteen to employ or permit the employment of such child at housework or farm work so as to prevent the child's attendance at school.

A new section was added to the consolidating act of 1915 (c. 23) requiring the school board, when the number of children in a school district was insufficient to require the school to be kept open (less than ten), to make provision for the education of the children by agreement with other school boards and to provide for the conveyance of the children to the school.

At the first session in 1917 (c. 19) the School Attendance Act was passed. This required the attendance of children over seven and under fourteen years of age at the school of the district for the whole period during which the school might be in operation in the year. Parents were exempted from penalty under the act for the usual reasons and also if the child had passed grade eight or its equivalent. The employment of children under fourteen during school hours was forbidden under penalty but the school trustees might grant a child over the age of twelve a certificate setting forth that his services were "required in husbandry or in urgent and necessary household duties" and relieve him from attendance at school for such periods as they might deem proper.

The Saskatchewan executive committee of the Trades and Labor Congress asked the provincial government in 1919 that no child of school age should be allowed to work during school hours [1] and at the session of 1919-20 (c. 40) the penalty for the employment of children was increased and the powers of the trustees to grant certificates were changed. It was provided instead that when the board was of the opinion

[1] *Trades and Labor Congress*, 1919, p. 85.

that the services of any child over thirteen years of age, who had passed grade five of the public school course, were required in husbandry or in urgent or necessary household duties, it could issue a certificate, but only by resolution at a regular or special meeting, and relieve the child from attendance at school for such time as they might deem proper but not for more than 30 teaching days in any year. The compulsory school attendance for children over seven and under fourteen years, as required by the earlier legislation, was extended in 1921-22 (c. 48) to include children under fifteen years and the employment of children under fifteen during school hours without a valid excuse was forbidden.

*Alberta*

When Alberta became a province in 1905 the provisions of the School Ordinance of the Northwest Territories [1] continued in force in the province until amended at the second session of 1910 (c. 2), when it was provided that schools should be kept in operation at least 200 teaching days during each year when there were at least fifteen children in the district between the ages of seven and fourteen years and 120 teaching days when there were at least ten children of these ages. A section was also inserted that if the board of school trustees for any reason deemed it inadvisable or inexpedient to keep the school open it could submit a statement of the facts to the Minister of Education who could make such order as he deemed fit with regard thereto.

The Truancy Act was passed in the same session (c. 8) and required every child of seven years and under fourteen to attend school for the full term the school of the district might be open. Exemption from attendance could be granted on the usual grounds. No child under the age of fourteen

[1] *Cf. supra*, p. 366.

years could be employed during school hours unless he had a valid excuse under the act. When the services of the child were required in husbandry or in urgent and necessary household duties or for the maintenance of himself or some person dependent upon him, a justice of the peace, a police magistrate or the principal of the school attended by the child could issue a certificate relieving the child from attending school for any period not exceeding six weeks during each school term.

The school-leaving age was advanced from fourteen to fifteen in 1915 (c. 10) but children were permitted to be absent from school when they had attained the age of fourteen and were regularly employed during school hours in some useful occupation. The title of the act was changed to the School Attendance Act in 1916 (c. 9). In 1918 (c. 39) the age of fourteen, as specified in the amendment of 1915, was raised to fifteen and it was provided that a child might be exempt from school attendance who had passed grade eight or its equivalent or if the school of the district did not provide instruction beyond that grade. The commissioner of the juvenile court was added to the list of those who might issue a certificate to relieve a child from school attendance for not more than six weeks during each school term. An amendment of 1919 (c. 32) raised the age below which no child might be employed during school hours without a valid excuse from fourteen to fifteen and provided that a certificate to relieve a child from school attendance could be issued by the commissioner of the juvenile court only in open court and upon two days' notice of the application therefor being given to the secretary or attendance officer of the district in which the child resided.

*Manitoba*

Not until the session of 1913-14 (c. 19) did Manitoba enact provisions as to school attendance. These were contained in an amendment to the Children's Act, adding sections which made it the duty of public school boards to report to the Department of Education on or before the fifteenth of July in each year the name, age and address of every child in the school district over the age of seven and under the age of fourteen years who had not registered in school during the preceding year together with the name and address of his parent or guardian. The teacher or principal of every school in the province was required to report to the Department of Education on the last day of each month the name, age and address of every child on the register of the school who had not attended regularly. Probation officers, truant officers and the superintendent of neglected children were to examine into cases of truancy, "to warn each such truant and the parents or guardians in writing of the consequences of truancy" and to require them to cause the child to attend some school or make other provision for his education within five days from the receipt of the notice, under penalty of prosecution under the act. Any person "who permits any child to be a truant" was added to the list of persons having the charge of a child under the age of sixteen, guilty of an offence under the act and liable, on conviction, to a fine not exceeding one hundred dollars or to imprisonment, with or without hard labor, for any term not exceeding three months.

A section was added as to the employment of children, that no child under the age of fourteen years should be employed during school hours except under the terms of a written permit obtained from a judge, the superintendent of neglected children or a truant officer. The penalty for em-

ployment contrary to these provisions was a fine of one hundred dollars for each offence and, in default of payment, imprisonment for a term not exceeding one month.

The School Attendance Act of 1916 (c. 97) made more definite provisions as to compulsory attendance. Children over seven years of age and under fourteen years were required to attend school for the full term during which the schools of the district were open and children over fourteen enrolled in elementary or secondary schools were to attend regularly while so enrolled and to be under the jurisdiction of the school attendance officer. Penalties were imposed on parents or guardians for failure to send children to school but the usual exemptions were allowed. A child under fourteen could not be employed during school hours unless in possession of a certificate from the principal of the school, justice of the peace or police magistrate, stating that the services of the child (if over ten years of age) were needed in husbandry, or in urgent and necessary household duties, or for the child's own maintenance or that of some person dependent upon him and employment could not continue for more than six weeks in any school term. The minimum age for such employment was in 1917 (c. 77) increased from ten years to twelve.

In 1919 the Manitoba executive committee of the Trades and Labor Congress asked the provincial government to advance the school-leaving age to sixteen years [1] and in the same year (c. 90) school boards with attendance officers in their employ were empowered to pass by-laws requiring children to attend school until they had attained the full age of fifteen years, unless excused for any of the reasons previously given. In 1924 (c. 60) it was provided that every child should remain in attendance at school until the close of the term during which he attained the full age of fourteen years

[1] *Trades and Labor Congress*, 1919, p. 84.

and, further, that children over fourteen and under sixteen were to attend school regularly " when not actively and regularly employed in industry or in household duties, or farm work."

### *Quebec*

There is no compulsory school attendance law in the province of Quebec. The nearest approach to legislation of this kind is an amendment to the Industrial Establishments Act, passed in 1919 (c. 50), which forbade the employment of children under sixteen in industrial or commerical pursuits unless able " to read and write fluently and easily." [1]

### SUMMARY

In 1873 Nova Scotia prohibited the employment of boys under ten years in mines and the hours of work for boys of ten and under twelve years were limited to ten for the day and 60 for the week. British Columbia passed more drastic legislation in 1877 and now the Yukon Territory and all the provinces except Manitoba, New Brunswick and Prince Edward Island have legal restrictions on the employment of children in mines, the Ontario legislation, which places the minimum age for underground workers at eighteen years, being the most advanced. The minimum age for employment in mines in Alberta is fourteen above ground and sixteen below ground; in the coal mines of British Columbia, fourteen above and fifteen below, and in the metalliferous mines, twelve below; in the coal mines of Nova Scotia, sixteen above or below ground, and in the metalliferous mines, twelve above or below; in Quebec, fifteen below; in Saskatchewan, fourteen below, and in the Yukon, twelve above and below. Child workers are governed by the 48-hour limit for all mine employees in British Columbia, and for all

[1] *Cf. supra*, p. 329.

underground workers in Alberta, Ontario and the Yukon. The weekly hours for child workers are limited to 48 for boys from twelve to sixteen above ground in the Yukon and for boys fifteen to seventeen underground in Quebec, while in Nova Scotia the limit is ten hours a day and 54 a week. No maximum has been established in Saskatchewan.

The first factory laws, those of Ontario and Quebec, passed in 1884 and 1885 respectively, prohibited the employment of boys under twelve and girls under fourteen years and limited the weekly hours of older children to 60, although for six weeks in the year they might be required to work 72½ hours in the week. The minimum age for boys in Ontario factories was advanced to fourteen years in 1895 but some exception was granted to the canning industry and this remained in force until 1918. The maximum working week of 60 hours, which may be extended to 72½ hours in the busy season, still obtains for child and women workers in Ontario, but these hours now apply to youths under sixteen years. In Quebec the maximum work week is normally 60 hours, though this may be extended to 72 hours in the busy season. Quebec forbids the employment of all children under fourteen and of illiterate children under sixteen years and limits the work of children in textile mills to 55 hours in the week. As to the remaining provinces, the Factories Act of Alberta establishes a minimum age of fifteen for both boys and girls, limits the weekly hours of all workers to 60 and provides for an advisory board to recommend maximum hours. British Columbia has also established a minimum age of fifteen years for both boys and girls although exception is permitted in fish and fruit canning during their seasons. Female workers over fifteen have a maximum work-week of 48 hours but no maximum has been established for boys. In Manitoba boys under fourteen and girls under fifteen may not be employed in factories, and female

employees over fifteen years and boys of fourteen and under seventeen are limited to nine hours in the day and 54 in the week. New Brunswick has no minimum age for the admission of children to factory employment but the school attendance legislation forbids the employment of children under thirteen in mechanical and manufacturing establishments in the cities and towns where compulsory attendance applies. Female factory employees over fourteen years may not work more than ten hours in the day and 60 hours in the week. Nova Scotia has established a minimum age of fourteen for both boys and girls, and children under sixteen years have a maximum work-week of 44 hours. In Saskatchewan the minimum age for factory employees is fourteen years for boys and fifteen for girls, and the maximum work-week for both and for women is 48 hours. Prince Edward Island has no legislation on the subject.

Ontario and Manitoba passed Shops Regulation Acts in 1888, which limited the weekly work period to 74 hours for young persons (boys under fourteen and girls under sixteen years) employed in shops but not including delivery drivers. An Ontario law of 1897 forbade the employment of children under ten years and limited the normal working hours of children under fourteen years, young girls and women to ten hours in the day. On Saturdays, days before statutory holidays and the two weeks before Christmas, they might be employed from 7 a. m. until 10 p. m., exclusive of mealtime. The minimum age for children in the shops of Ontario was advanced to twelve years in 1908, and in 1913 the Shops Regulation Act was consolidated with the Factories Act, and the child-labor provisions for factories, given above, also apply to shops although the extra hours on Saturdays, before holidays and Christmas were continued. In Manitoba, by a law of 1916, boys over thirteen and under fourteen years were permitted to work in shops two hours

on school days and eight hours on school holidays, and children under fourteen could be so employed eight hours in the day and 48 in the week upon presentation of certain certificates. Males between fourteen and seventeen and females over fourteen were not permitted to work more than fourteen hours in the day and 60 hours in the week. The inspector could allow a weekly work period of 70 hours in emergency but his powers in this regard were restricted to persons over sixteen years of age by a law of 1917.

The Nova Scotia law of 1895 limited the weekly work period to 72 hours but otherwise it was identical with the Ontario law of 1888. The hours for boys under fourteen and girls under sixteen employed in shops were reduced in 1909 to eight per day and not more than four on Saturday. British Columbia established a higher standard than any of the other provinces in 1900 when the employment of boys and girls under sixteen years was limited to 66½ hours in the week, including mealtimes. A law of 1901 prohibited the employment of children under fourteen years in bakeshops. The Alberta provisions as to child labor in shops are identical with those governing factories, given above. The school attendance legislation of New Brunswick forbids the employment of children under thirteen years in mercantile establishments in cities and towns.

As to street trades, the province of Ontario in 1893 forbade the employment of children under ten years of age as performers or to offer things for sale in any street or in premises licensed to sell liquors or in places of amusement. Night work in these employments was permitted only to boys over fourteen and girls over sixteen years but municipalities could permit the employment of children over seven years of age in amusement places under such conditions as they might prescribe. There have been several amendments to the law and now the minimum age of employment in street trades is

twelve years for boys and sixteen for girls. Boys and girls under sixteen employed as performers or in selling goods in public places must not be employed between 9 p. m. and 7 a. m. while employment of children of these ages in street trades is prohibited between 10 p. m. and 6 a. m. Municipal authorities may license children over ten years to perform in public entertainments. In Manitoba children under twelve years found employed in street trades, children under sixteen years so employed between 10 p. m. and 6 a. m. and children under fourteen years habitually so employed during school hours or after 9 p. m. may be apprehended and taken to a detention home. It is illegal to employ habitually children under eighteen years between 9 p. m. and 6 a. m. or children under sixteen in work injurious to "life, limbs, health, education or morals." Municipal councils may grant licenses for the employment of children in street trades but not for employment during the night and not to boys from twelve to fourteen years without written permission of their parents. Girls may not be licensed nor boys under twelve years. The Department of Child Welfare may grant licenses for the employment of children over ten years as performers. In Saskatchewan and Alberta children may be licensed under the same regulations as in Manitoba.

In general, the employment of children under sixteen years as performers in amusement places is forbidden in Saskatchewan and Alberta but municipal officials are authorized to grant licenses for employment in such work to children over ten. Nova Scotia prohibits the employment of any child under sixteen years in street trades during school hours unless he holds a certificate of certain standing in school work. British Columbia permits the apprehension of children under eighteen years found begging and New Brunswick has authorized the commissioner of the juvenile court to regulate the employment of children under sixteen years in street

trades. In Quebec children under sixteen years may not be employed as public performers nor in street trades unless they can read and write fluently.

In 1897 the Northwest Territories prohibited the employment of any female except a licensee or the wife of a licensee or any male under eighteen years to sell intoxicating liquors. Legislation of this character has been enacted by the Yukon (1902), Quebec (1905), Nova Scotia (1906), Alberta (1907), Manitoba (1908), Saskatchewan (1908) and New Brunswick (1913), but much of it is now inoperative because of prohibition laws or government monopoly of the sale of liquors.

British Columbia in 1921 passed legislation prohibiting employment of boys under fourteen years and girls under fifteen and night employment for young persons under eighteen years in all industrial undertakings but it will not be proclaimed until similar laws have been passed by the other provinces.

The Dominion Government in 1924 forbade the employment of children under fourteen years on board vessels and the employment of young persons between fourteen and eighteen years as trimmers and stokers. Young persons employed in other capacities were required to present a medical certificate of fitness for the employment.

The factory acts of Ontario and Quebec required employers to keep a register of the women, young girls and children employed and to secure a certificate of age for every employee under fourteen years. Similar provisions were inserted in the later legislation of the other provinces. Alberta requires the maintenance of a register of all employees and their ages.

Ontario passed the first compulsory school attendance law of Canada in 1871, when children of seven to twelve years of age were required to attend school for at least four months

in the year and in 1891 "An act respecting truancy and compulsory school attendance" compelled children between eight years and fourteen years to attend school regularly. Children could be relieved from attendance if they were required in husbandry or in household duties or to maintain themselves or persons dependent upon them and these grounds for exemption were written into the subsequent legislation of the other provinces. In 1912 an Adolescent School Attendance Act empowered the local authorities to require young persons between the ages of fourteen and seventeen years inclusive to attend day or evening classes. In 1916 this legislation was replaced by a measure under which a further effort was made to interest local school boards in the education of adolescents. The Adolescent School Attendance law passed in 1919 required adolescents between fourteen and sixteen years to attend school regularly unless exempt under conditions stated.

In 1873 British Columbia authorized local authorities to compel some measure of school attendance. A law of 1876 required children from seven to twelve years inclusive to attend school for six months in the year, and in 1905 regular attendance was required of all children in city schools between the ages of seven and fourteen years. This regulation was made optional with rural school districts in 1912 but in 1920 compulsory attendance was required of all children of school age in the province. The school age was extended to fifteen years in 1921.

Beginning with a law of 1877 Prince Edward Island has made school attendance compulsory for children between the ages of seven and thirteen for 60 per cent of the days the school is in operation. Nova Scotia after much legislation has required children between six and sixteen years in cities and towns to attend school every day the school is in session. In rural districts the local school meetings may on a ma-

jority vote require children between six and sixteen years to attend school throughout the school year. The employment of children under fourteen years in cities and towns during school hours was forbidden from the first unless in each case the child had certain specified educational attainments or had been granted an employment certificate. This minimum age has now been advanced to sixteen. In the cities and towns of New Brunswick the minimum age of employment in mechanical, manufacturing and mercantile establishments is thirteen years and it is stipulated that no child under sixteen years may be employed during school hours unless he has attended school for at least six of the twelve months preceding the employment. But children between fourteen and sixteen years may be excused from this requirement by the trustees on grounds of reasonable proficiency and attendance. In four of the larger cities and towns attendance throughout the school term is required of children between the ages of six and fourteen years. In other towns and cities children between six and sixteen years must attend a minimum period of 120 days in each year but only if the local school meeting has adopted a resolution to this effect. Children over twelve years with specified school attainments and children over thirteen years who have attended 60 days during fourteen consecutive weeks in the preceding year may be excused from further attendance if they must seek employment. In rural districts, when the school meeting has so resolved, the trustees are required to impose a small fine upon parents whose children between seven and twelve years of age have attended less than 60 per cent of the teaching days.

The provinces of Saskatchewan, Alberta and Manitoba have had regard for the short term in many of the rural schools and the long distances children have to go to school. Saskatchewan requires children over seven and under fifteen

years of age to attend school for whatever period the school of the district may be in operation. Children over thirteen may be granted employment certificates relieving them from attendance for not more than 30 teaching days in the year. The Truancy Act of Alberta of 1910 established compulsory attendance for children of seven years and under fourteen for the whole period the school of the district might be open. In Alberta the school-leaving age was advanced to fifteen years in 1915 but children could be granted employment certificates for six weeks in the school term. Manitoba requires children over seven and under fourteen years to attend school for the full term and children from fourteen to sixteen when not employed in industry, agriculture or household duties. Children over twelve years may be granted employment certificates for six weeks in each school term. While Quebec does not compel attendance at school, it forbids the employment of illiterate children under sixteen in industrial and commercial pursuits. The Yukon Territory requires children between seven and twelve years inclusive to attend school for at least sixteen weeks in each year, eight of which must be consecutive.

As to the degree of conformity with the decisions of the International Labor Organization, set forth at the beginning of this chapter, the general rule is that children must attend school until the age of fourteen at least. Exceptions are found in Quebec, which has no compulsory law; Prince Edward Island, which requires attendance only to the age of thirteen; New Brunswick, which makes compulsory attendance optional with the local authorities in country districts and in all but four of the cities and towns; Nova Scotia, where compulsory attendance is optional with the local authorities in the country districts; and the Yukon Territory, which requires attendance up to thirteen years. New Brunswick and Nova Scotia, in districts where compulsory

attendance applies, and Alberta, Ontario and Saskatchewan allow children to be employed for stated periods during the school term if necessity requires. British Columbia, Prince Edward Island and the Yukon make no provision for the issuance of employment certificates for work during school hours. As to agriculture, the school attendance laws of Alberta, Manitoba, Ontario and Saskatchewan permit some exemption for urgent work therein.

With regard to the convention which proposes to forbid employment of children under fourteen in industrial undertakings during school hours, as noted above, certain provinces permit children to be employed if necessity requires. Quebec does not compel school attendance but employment of illiterate children under sixteen in industrial and commercial pursuits is prohibited. Dominion legislation of 1924 embodies all the international requirements with regard to the employment of children and young persons on ships.

As to agricultural night work for children, Alberta, Manitoba and Saskatchewan permit apprehension of children under sixteen years employed anywhere during the night. No other province has legislation limiting night work of children in agriculture.

With regard to the abolition of night employment for young persons under eighteen in industrial undertakings, as required by the convention, the general prohibition of night work by persons under eighteen years in Manitoba covers this point. All the mining provinces except Nova Scotia provide against employment of female persons underground day or night and Ontario forbids boys under eighteen to be employed below ground at any time. British Columbia has legislated against employment of young persons at night in bakeshops and laundries. Quebec prohibits employment of boys and of all females in factories at night; and Alberta, Ontario and Saskatchewan the night employment of all

females in factories, shops and office buildings. The factory acts of British Columbia, Manitoba, New Brunswick and Nova Scotia provide against night work for females during the periods of exemption from regular hours authorized by the inspector (except for 20 days during the canning season in Nova Scotia). None of the laws make special provision for night employment of children in continuous processes.

In their factory acts all of the provinces except Alberta and Prince Edward Island have prohibited employment of boys under sixteen (fourteen in New Brunswick) and girls under eighteen in dangerous or unwholesome work. Quebec specifically includes white lead in the list of dangerous establishments. There is no legal regulation of the employment of women and young persons in painting work.

On the whole child workers have better legal protection in Canada than in the United States. Children are kept at school and out of the factory to the age of fourteen in most of the states. About forty also prohibit night work for children under sixteen and the majority of important industrial states limit their daily hours to eight. About half of the remaining states restrict hours for children to nine in the day and the rest allow ten hours or more. In some of the Southern states children in cotton mills may work eleven hours in the day.[1]

[1] Commons and Andrews, *Principles of Labor Legislation*, pp. 228, 229, 276, 335.

## CHAPTER X

### Equal Pay for Equal Work

"The principle that men and women should receive equal remuneration for work of equal value." (Treaty of Peace: Article 427, 7.)

No laws have been passed under the seventh clause, the payment of equal wages to men and women workers for service of equal value, but the principle has received some attention. At the fifth Trades and Labor Congress, held in Montreal in 1889, it was resolved:

Whereas at the present time female labor is manipulated and used as a means of reducing the price of labor in general; and in trades where the female is so used to the detriment of the male labor, as exemplified particularly in the printing business, she is scarcely ever properly taught said trade, or given an opportunity of earning a fair rate of wages, being merely used for the time being as a lever to reduce the price of labor; and whereas, if woman is to be recognized as a competitor in the labor market such competition should be on a fair basis, brought about by her going through the same routine of learning a trade as the male, and consequently getting the same rate of wages; therefore, resolved:—That the Dominion Trades and Labor Congress strongly discountenances this evil, and requests that employers of labor be urged to pay the woman the same wages as the man for the same class of work properly done.[1]

The Congress is also on record that: "It is one of the principles for which organized labor has contended that there should be equal pay for equal work, regardless of the

[1] *Trades and Labor Congress*, 1889, p. 23.

sex of those by whom it is performed." [1] Indeed, "equal pay for equal work for men and women" has been one of the objectives of the Congress [2] for some years and, still earlier, of the Knights of Labor.[3]

The Congress has protested against the practice of paying lower salaries to women factory inspectors than to men on the staff.[4] The Platform of Principles of the Congress contained the following clause—"Abolition of child labor by children under fourteen years of age and of female labor in all branches of industrial life such as mines, workshops, factories, etc." In 1915 it was declared that the purpose for which this clause was included "has not been accomplished and was a mistaken means of preventing the employment of women as a cheap form of labor." The Congress then resolved that the clause should be amended to read: "Abolition of child labor for children under sixteen years and the establishing of equal pay for equal work for men and women." [5]

The first official expression of view on the subject by the Dominion Government appeared in the order-in-council approved July 11, 1918, in which the government announced its war labor policy.[6] One of the principles and policies declared and urged upon employers and workmen for the period of the war was: "That women on work ordinarily performed by men should be allowed equal pay for equal work and should not be allotted tasks disproportionate to their strength."

[1] *Ibid.*, 1901, p. 79.

[2] *Cf. supra.*

[3] *Cf. supra.*

[4] *Ibid.*, 1901, p. 79; 1905, p. 40.

[5] *Ibid.*, 1915, p. 98.

[6] P. C. 1743. Certified Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 11th July, 1918.

It was stated in the Trades and Labor Congress of 1918 that this principle would be insisted upon and that the government would be asked to make a declaration to that effect.[1] When in 1919 the Dominion Government distributed cost-of-living bonuses to the civil service and treated single men and women less generously than other employees, the Congress protested "against the Government taking advantage of the necessities of its employees, either in payment of wages or bonus" and demanded "that men and women doing equal work receive equal salary and bonus."[2]

[1] *Trades and Labor Congress*, 1918, p. 19.

[2] *Ibid.*, 1919, p. 189.

# CHAPTER XI

## Fair Treatment of the Alien

"The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein." (Treaty of Peace: Article 427, 8.)

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"Foreign workers and their families shall enjoy the same protective legislation as native workers (1919 recommendation). Members having systems of unemployment insurance shall arrange that workers in the territory of another member shall receive the same rates of unemployment benefit as native workers (1919 convention). Members shall also grant foreign workers the same treatment in respect of workmen's compensation as is accorded to their own nationals (1925 convention and recommendation)."

At several points Canadian labor law denies the alien the treatment accorded the native workman. The legislation may be treated under four heads: (1) exclusion from employment on public works and public utilities, (2) exclusion from employment in mines, (3) differential treatment in workmen's compensation, and (4) prohibition of employment of white women by Orientals.

The British Columbia and Ontario legislatures have passed laws restricting the employment of aliens on public works. British Columbia has sought by legislation, much of which has been declared *ultra vires*, to exclude Oriental workers from employment in mines; and Saskatchewan, following the early mining law of the Northwest Territories, has rendered the employment of aliens in mines difficult by excluding non-English-speaking persons from positions of

trust. All the provinces except Saskatchewan and Prince Edward Island which has no law discriminate against alien workers in granting compensation for accidents and Saskatchewan, Manitoba, Ontario and British Columbia have enacted legislation prohibiting the employment of white women by Chinese in restaurants and laundries.

Anti-alien sentiment has at times invaded the Dominion Parliament. An editorial in the *Toronto Globe* of January 4, 1879, quoted from a speech of Sir John A. Macdonald as follows:

> On March 18, 1878 a British Columbia member moved a resolution against the employment of Chinese labor on the Canadian Pacific Railway. Mr. [Hon. Alexander] Mackenzie said he hoped the honourable gentleman did not really expect such a resolution to obtain any support in the House. It was one unprecedented in its character and altogether unprecedented in its spirit and at variance with those tolerant laws which afforded employment and an asylum to all who came into our country, irrespective of colour, hair, or anything else. He also said it would not become a British community to legislate against any class of people who might be imported into or might emigrate to this country.

British Columbia has been first among the provinces in enacting legislation of this character, of which by far the greater part has been directed against the immigrant from the Orient. The government of that province has in fact gone much farther. It has imposed special taxation on Chinese and has sought to stop Chinese immigration. In 1878 (c. 35) "An act to provide for the better collection of provincial taxes from Chinese" or the Chinese Tax Act, 1878, made it necessary for every Chinese person over twelve years of age to pay ten dollars quarterly in advance for a license. Employers of Chinese labor were required to

furnish a list of all Chinamen in their employ with penalty, for failure to furnish the list and for making false statements in the list, of a fine to be recovered by distress of goods and chattels. Chinese who neglected to take out licenses were made liable to perform labor on public works equivalent to the license fee. In Tai Sing *v.* Maguire [1] in October 1878 the act was held *ultra vires* of the provincial legislature.

A Chinese Regulation Act of 1884 (c. 4) imposed an annual tax of ten dollars on all Chinese over fourteen years of age for a license and otherwise in the main re-enacted the provisions of the law of 1878 with the addition of sanitary provisions affecting buildings let to Chinese. The measure was held *ultra vires* by the Supreme Court of British Columbia in Regina *v.* Wing Chong,[2] August 21, 1885. An appeal to the Privy Council was entered by the province but no steps were taken for its prosecution and on July 22, 1886 the Privy Council office was informed that the province did not intend to proceed with the appeal.[3]

In 1884 (c. 2) the legislature prohibited the issuing of preemption records of Crown lands or the sale of Crown lands to Chinese or the granting of authority for any Chinese to divert water or obtain a water record. In the same year also (c. 3) an "Act to prevent the immigration of Chinese" was passed. This measure made it unlawful for any Chinese to enter British Columbia under penalty of fifty dollars and permitted the arrest of Chinese immigrants without warrant. Penalties were imposed on persons who might assist in bringing Chinese into the province and the law

[1] 1 *B. C. R.*, pt. i, 101.

[2] 1 *B. C. R.*, pt. ii, 150.

[3] *Correspondence, Reports of the Ministers of Justice and Orders in Council upon the Subject of Dominion and Provincial Legislation*, 1867-1895, p. 1095.

authorized the arrest of such persons without warrant. This act was disallowed by the Dominion government in that year [1] but was reenacted with some minor changes in 1885 (c. 13).

"An act to regulate immigration into British Columbia," passed in 1903-4 (c. 26), prohibited the immigration of persons unable to write out "in some language of Europe" a passage of fifty words on dictation. This law was disallowed by the Dominion government [2] but was passed again at the session of 1905 (c. 28) and again disallowed by the Dominion.[3]

In 1924 the British Columbia Legislature adopted resolutions recording its opinion that employers should employ members of the white race exclusively, that the commercial and industrial activities of all Orientals should be restricted by legislation and as being opposed to the further influx of Orientals.

It may or may not have been the intention of the framers of the Male Minimum Wage Act, passed in 1925 (c. 32), that its provisions would tend to displace Oriental workers, but it has been reported in the press of the province that the law is having that effect.

### Exclusion from Employment on Public Works and Public Utilities

#### *British Columbia*

In 1897 (c. 1) the British Columbia Legislature passed "An act relating to the employment of Chinese or Japanese persons on works carried on under franchises granted by private acts" or the Alien Labor Act, 1897, designed to prevent the employment of Oriental labor on such work as

[1] *Correspondence on Dominion and Provincial Jurisdiction, op. cit.*, p. 1092.

[2] *Labour Gazette*, vol. v, p. 1236.

[3] *Ibid.*, vol. vi, p. 481.

the construction and operation of railways, telegraph and telephone lines, highways, harbor and river works, and in various lines of business carried on under franchises granted by the legislature. This act provided that acts or amendments to former acts granting rights for the construction of any such works or for the carrying on of any business or calling or giving or confirming any property rights or privileges should carry the provision that no Chinese or Japanese persons should be employed. With regard to the penalty imposed it was provided that there should be successive penalties for each and every day during which Chinese or Japanese were employed. The Lieutenant-Governor reserved assent to this measure and it was omitted from the revision of the statutes of 1897. In 1898 (c. 28) it was reenacted as the Labor Regulation Act, and with a new Lieutenant-Governor in office the act received assent.

In 1900 (c. 14) the text of the act was changed so as not expressly to exclude Chinese or Japanese. Instead it was provided that no workman should be employed "who, when asked to do so by a duly authorized officer, shall fail to himself read, in a language of Europe, this Act." The law was reenacted in 1902 (c. 38), in 1903 (c. 14) and again in 1905 (c. 30) when it was disallowed by the Dominion Government.[1]

The Subsidized Works Labor Regulation Act, 1902, passed in 1902 (c. 39), forbade the granting of subsidies for railways or other works unless the persons concerned had entered into an agreement with the provincial government as to the employment of labor in connection with the work on conditions that seemed "meet and proper" to the Lieutenant-Governor in Council. This, obviously, permitted the government to exclude aliens from such employment. No amendments have been made to this act.

[1] *Ibid.*, vol. vi, p. 481.

In the same year orders-in-council were approved authorizing the application to various provincial works of a resolution passed by the legislature of the province on April 15, 1902 as follows: "That in all contracts, leases, and concessions of whatever kind entered into, issued, or made by the Government or on behalf of the Government, provision be made that no Chinese or Japanese shall be employed in connection therewith."

Victoria, the capital of the province, had taken a similar position almost a decade before. In 1893 the Victoria city council resolved: "That a clause be inserted in all specifications for civic contracts that no Chinese labor be employed, nor any material used in the manufacture of which Chinese labor has been employed." [1] The same year an unsuccessful attempt was made in the legislature to exclude them from employment on provincial works.[2]

In 1921, first session, (c. 49) the orders-in-council were made part of the law of the province by the Oriental Orders-in-Council Validation Act which stated that they should be deemed to have been valid and effective from the dates of their approval. The Japanese Government had taken objection to the orders-in-council and their constitutionality was tested in the courts. The Court of Appeal of British Columbia, after argument by the attorney-general of the province and an attorney for the Canadian-Japanese Association, held on November 16, 1920, that it was not competent to the legislature of British Columbia to authorize the government to insert as a term of its contracts for the construction of public works or as a term of its contracts and leases the provision that no Japanese should be employed in connection with the works.[3] On appeal, the Supreme

[1] *Trades and Labor Congress*, 1893, p. 6.

[2] *Ibid.*, 1893, p. 19.

[3] 29 *B. C. R.* 136.

Court of Canada, on February 7, 1922, rendered a decision that the legislature of British Columbia had not the authority to enact this legislation on the ground that it trespassed upon the right to make laws with relation to such subjects as "naturalization and aliens" conferred upon the Dominion Government by the British North America Act.[1] The Court also held that the statute conflicted with the Japanese Treaty Act of 1913 (c. 27) in that it placed the Japanese on a footing less favorable than that of subjects or citizens of more favored nations, contrary to the obligations of the treaty. As a result of this opinion the Governor in Council on March 31, 1922 disallowed the act.[2] The attorney-general of British Columbia appealed then to the Judicial Committee of the Privy Council which held, October 18, 1923, that the provincial act violated the principles laid down in the Japanese Treaty Act of 1913 and accordingly dismissed the appeal.[3]

An important decision was rendered by the Privy Council in another appeal arising out of the Oriental Orders-in-Council Validation Act in the case of Brooks-Bidlake and Whittall Ltd. *v.* Attorney-General of British Columbia.[4] The question to be determined was whether this company, the appellants, were entitled to the renewal of their license to cut timber from lands belonging to the province since they had been employing Chinese. The judgment of the Privy Council stated:

> Now whatever may be said as to the stipulation against employing Japanese labour, there is nothing (apart from the British North America Act) to show that a stipulation against

[1] 63 *Can. S. C. R.* 293.

[2] *Labour Gazette*, vol. xxii, p. 205.

[3] [1923] 4 *D. L. R.* 698, Att'y Gen'l of British Columbia *v.* Att'y Gen'l of Canada.

[4] [1923] 2 *D. L. R.* 189.

the employment of Chinese labour is invalid. The stipulation is severable, Chinese and Japanese being separately named; and the condition against employing Chinese labour having been broken, the appellants have no right to renewal.

### EXCLUSION FROM EMPLOYMENT ON RAILWAYS

#### *Ontario*

The following section with regard to the employment of aliens, together with a penalty clause, was inserted in the Ontario Railway Act of 1900 (c. 28) and is still part of the act:

> No person shall be employed in the construction of any railway receiving a subsidy either in money or in land, who is a citizen or subject of any country having an alien labour law which has the effect of excluding Canadians from employment upon the public works of such country or on other works therein.

#### *British Columbia*

In 1908 (c. 50) an amendment to the Railway Assessment Act of British Columbia empowered the Lieutenant-Governor in Council to grant any railway company exemption from taxation for a period not exceeding ten years from the date of the completion of the railway after January 1, 1908, provided that no aliens were employed during the construction of the railroad unless it were demonstrated to the satisfaction of the Lieutenant-Governor in Council that the work could not be carried on without their employment. In the revision of 1911 this provision was incorporated in the Taxation Act.

### Exclusion from Employment in Mines

#### *British Columbia*

In the first Coal Mines Regulation Act of British Columbia, passed in 1877 (no. 15), a rule was embodied that

"no Chinaman or person unable to speak English" should hold any position of trust or responsibility in or about any mine governed by the act, wherein he might endanger the life or limb of others. An amendment in 1890 (c. 33) excluded Chinese from employment in underground workings of coal mines.

The question of the constitutionality of this regulation of 1890 was referred to the Supreme Court of the province and on December 11, 1896 the act was declared within provincial powers as being a regulation of coal mines and not an interference with the subject of aliens.[1] Under this provision Little, the manager of the Union Colliery Company, was convicted for the employment of a Chinaman in the company's mines below ground and fined $100. He made application to have his conviction quashed, which was done in Regina *v.* Little,[2] June 12, 1897, on the ground that the employment of Chinamen was not made an offence under the act for which any penalty was imposed. The Crown then appealed to the Supreme Court of the province from the judgment and the appeal was argued on January 28, 1898 and dismissed. Appeal was taken to the Privy Council which held, in a judgment delivered July 28, 1899, that section 4 of the Coal Mines Regulation Act which prohibited the employment of Chinese of full age in underground coal workings was in that respect *ultra vires* of the provincial legislature. Regarded merely as a coal-working regulation it would come within the scope of subjects granted to the provinces by the British North America Act "but its exclusive application to Chinese who are aliens or naturalized subjects establishes a statutory prohibition which is exclusively within the competence of the Dominion Parliament."[3]

[1] 5 *B. C. R.* 306.

[2] 6 *B. C. R.* 78.

[3] [1899] *A. C.* 580, Union Colliery Company *v.* Bryden.

A further amendment to the act, in 1894 (c. 5), evidently was directed against aliens for it extended the powers of the inspector

> to the case of there being employed in a mine any person who, by reason of want of understanding or owing to mental or physical incapacity or incompetency for the performance of the particular task or duty upon which he is engaged, is a source of danger to his co-labourers or to others who may be in the mine, and whose presence and employment threaten or tend to the bodily injury of any person.

In the following session, that of 1895 (c. 38), the scope of this provision was enlarged so that on the application of three miners it was the duty of the inspector to examine any person employed in a mine "unable to clearly understand instructions conveyed to him." It was further stated that the employment in any mine of any person or persons in want of such understanding, or found by the inspector so to be, should be deemed a matter "dangerous and defective" within the meaning of the Coal Mines Regulation Act.

Employment of Chinese underground in coal mines had been prohibited in 1890 (c. 33) and in 1899 (c. 46) employment of Japanese was likewise forbidden.

Following the court decisions as to the unconstitutionality of provisions against employment of aliens underground attention was turned to regulating the granting of certificates and an addition to the act in 1901 (c. 36) forbade the granting of certificates of competency necessary for the employment of coal miners unless they could satisfy the board of examiners that they were "sufficiently conversant with the English language" and with the legislation relating to coal mining to render their employment safe.

By an amendment of 1902 (c. 48) the rule of the 1877

act that no Chinaman or person unable to speak English should occupy any position of trust or responsibility "whereby through ignorance, carelessness or negligence he might endanger life or limb of any person employed in or about the mine" was made to apply also to Japanese, and the phrase "or be employed below ground" was added. This legislation was disallowed by the Dominion Government. In 1903 (c. 17) the rule was reenacted in the language of 1902 (c. 48) except that no mention was made of Japanese. The question of the constitutionality of the enactment of 1903 was referred to the Supreme Court of British Columbia and held *ultra vires*.[1]

To set at rest doubts which had arisen as to "the meaning of the words 'Chinaman' and 'Chinese' when used in the Coal Mines Regulation Act" the definition of these terms was inserted in the act in the session of 1903-4 (c. 39) as including "any person or persons of the Chinese blood or race, whether born within the limits of the Chinese Empire and its dependencies or not, and without regard to naturalization." Despite the decision that the 1903 law was unconstitutional it was reenacted in the same terms in 1905 (c. 36) but was again disallowed by the Dominion. In the consolidating act of 1911 (c. 33) some minor changes were made in the wording of this rule and the provision as to employment below ground omitted.

The coal miners' union of Cumberland, British Columbia, presented a resolution to the Trades and Labor Congress in 1913 and again in 1914 which called upon the Congress to bring pressure upon the Dominion Government to have Asiatics removed from working underground in the mines of Vancouver Island.[2] The resolution was concurred in but in the report on the resolution at the 1915 Congress it

[1] 10 *B. C. R.* 408.

[2] *Trades and Labor Congress*, 1913, p. 105; 1914, p. 126.

was stated that "inquiry revealed the fact that while the Dominion can and does discriminate as between immigrants entering Canada, no discrimination can be made as between individuals after entry." [1] But at the 1916 Congress it was reported that British Columbia had passed an act to assist in reducing the number of Asiatics in coal mines "this being due largely to the representations of Brother Irvine of the United Mine Workers, assisted from time to time by other members." This reference was to the act of 1916 (c. 42), the Coal-miners' Certificates Act. The preamble stated that since it had been alleged that certain coal-miners' certificates of competency were improperly held and used by persons not duly qualified or entitled to hold them the Government was desirous of ascertaining the true condition of affairs and of remedying any evils that might be found to exist. The Minister of Mines was empowered to appoint boards of investigation to enquire into any complaint and on finding that any person was wrongfully holding or using a certificate of competency that person was disqualified from employment as a coal miner in any colliery of the province. Further detailed provisions with reference to these certificates of competency were laid down in 1919 (c. 58).

When an act providing for inspection and regulation of mines other than coal mines was passed in British Columbia in 1897 (c. 27) the employment of both Chinese and Japanese underground was forbidden and it was also stipulated that the person in charge of hoisting machinery should not be Chinese or Japanese.

### *Northwest Territories*

In the first law of the Northwest Territories on mines, the Coal Mines Regulation Ordinance of 1893 (no. 5), the employment of aliens in mines was regulated by providing

[1] *Trades and Labor Congress*, 1915, p. 56.

that persons unable to speak English should not occupy any position of trust or responsibility in or about a mine. In 1898 (no. 9) the rule was made to apply to persons unable to read, as well as speak English.

*Saskatchewan*

With the formation of the province of Saskatchewan in 1905 the rule of the Northwest Territories, outlined above, became the law of the province and was continued without change until the second session of 1917 (c. 10), when in the new act, applying to all mines in the province, it was made somewhat more exacting.

DIFFERENTIAL TREATMENT IN WORKMEN'S COMPENSATION

*New Brunswick*

New Brunswick was the first province to discriminate against alien workers in legislation providing compensation for industrial accidents. In 1908 (c. 31) the Workmen's Compensation for Injuries Act was amended to provide that in case death should result from the injury, dependents should not be entitled to compensation unless they lived in Canada. The compensation act now in force, passed in 1918 (c. 37), provided that on the passing of an order-in-council compensation might be paid to the non-resident dependents of a workman killed or injured in New Brunswick if the laws of the country of their residence would provide reciprocal compensation. The order-in-council was passed in 1919. In 1924 (c. 8) it was further provided that if the compensation payable under the laws of such other country were less than the compensation payable in New Brunswick, the Workmen's Compensation Board might reduce the compensation accordingly or might award such lesser sum as, according to the condition and cost of living, would maintain the dependents in a like degree of comfort as dependents of the same class in Canada.

### *Quebec*

The workmen's compensation legislation of Quebec is the most stringent in Canada in denying compensation to alien workers and their dependents. The law of 1909 (c. 66) contained the following clause, which is still in force:

> A foreign workman or his representatives shall not be entitled to the compensation provided by this sub-section unless at the time of the accident he or they reside in Canada, nor after he or they cease to reside there while the rent is being paid, but if he or they cannot take advantage of this sub-section the common law remedy shall exist in his or their favour.

This section was modified in 1925 (c. 71) by an amending clause which provided that even if the contract of employment were made in the province, the above section should not apply to a workman injured in an accident happening outside the province, if the law of the country or of the province in which the accident occurred would entitle the workman or his representatives to compensation and if the employer had fulfilled his obligations and if the victim of the accident or his representatives had received compensation under such law. The employee had the choice of the place where he might exercise his recourse.

### *Manitoba*

The Manitoba Workmen's Compensation Act of 1910 (c. 81) provided that in fatal accidents compensation should be limited to the dependents who were resident within the province at the time of the accident. At the request of the Manitoba executive committee of the Trades and Labor Congress [1] this was changed in 1913 (c. 91) to make dependents living anywhere within the British Empire eligible

[1] *Trades and Labor Congress*, 1913, p. 34.

for compensation. In 1916 (c. 125) this provision was displaced by a clause similar to that inserted in the Ontario act of 1914, declaring that non-resident dependents would be limited to the amount of compensation granted by the law of their place of residence to the dependents of a workman injured there who were residing in Manitoba. It was stated that despite this clause the Compensation Board might award such compensation to any non-resident dependents as might be deemed proper. An amendment of 1920 (c. 159) prohibited the payment of compensation to dependents who, at the time of the death in respect of which compensation would otherwise be payable, were resident in any country which was an enemy country during the war.

*Nova Scotia*

The Nova Scotia Workmen's Compensation Act of 1910 (c. 3) made payment of benefit to dependents in fatal accident cases conditional upon residence in Canada. The new act of 1915 (c. 1) provided that dependents residing in any other province or country should not be entitled to compensation unless it was established in that jurisdiction that dependents of a worker injured there would be entitled to compensation "corresponding or equal" to that granted by the Nova Scotia law, if resident in that province. An amendment of 1917 (c. 70) authorized the Compensation Board to make payments to non-resident dependents if the compensation paid in the jurisdiction in which they lived were "on a basis similar to that provided in this act" in place of the term "corresponding or equal." A provision was added that if the compensation payable in the other country or province were less than that payable in Nova Scotia the Board might reduce the compensation accordingly. A further amendment of 1919 (c. 61) made it clear that these regulations applied to payment of compensation as distinguished from damages.

### *Ontario*

The Ontario Workmen's Compensation Act of 1914 (c. 25) limited compensation for non-resident dependents to the amount the laws of their place of residence would grant in the case of a workman injured there whose dependents resided in Ontario. A further clause, with an amendment of 1915 (c. 24), authorized the Compensation Board to grant in such cases, in lieu of the compensation prescribed by the act, "such compensation or sum as may be deemed proper." The Cobalt Miners' Union in a resolution presented at the Trades and Labor Congress of 1915 set forth their view that compensation should be paid to dependents regardless of place of residence. This discrimination, they thought, encouraged the mine operators to engage employees whose dependents lived abroad and thus tended to eliminate the native worker from the industry.[1]

By an amendment of 1919 (c. 34) compensation was denied to residents of enemy countries or of any country voluntarily withdrawn from alliance with the British Empire during the war, or of any country in default of establishing peaceful relations with the British Emipre.

### *The Yukon Territory*

A Workmen's Compensation Ordinance, adopted in the Yukon Territory in 1917 (c. 1), contained a clause restricting payment of compensation to non-resident dependents identical with that of the Ontario law as enacted in 1914.

### *Alberta*

The Workmen's Compensation Act of Alberta, enacted in 1918 (c. 5), provided that the law should not apply to non-residents of Canada who became dependents when the workman had been in Canada more than one year, except in

[1] *Trades and Labor Congress*, 1915, p. 115.

the case of the parents of the workman. This provision was not to come into effect until January 1, 1920. By an amendment of 1919 (c. 38) a new clause was substituted. It declared that in the event of injury to a workman after the expiry of two years from his arrival in Canada, it should be presumed that he had no dependents other than his parents, except those that lived in Canada. In the case of workmen not of British nationality a period of one year was fixed.

### *British Columbia*

Under the terms of the British Columbia Workmen's Compensation Act of 1902 (c. 74) the employer was obliged to pay compensation in fatal accident cases even if the dependents were aliens residing outside the province. The present act, passed in 1916 (c. 77), made no special provision for non-resident dependents but a clause inserted in the statute in 1919 (c. 93) stated that if the dependents were aliens residing outside of Canada the Compensation Board might award such lesser sum by way of compensation as would maintain them in a like degree of comfort as dependents of the same class residing in Canada would enjoy. The Board was authorized to commute periodical payments to non-resident alien dependents for a lump sum and to apply the money in the manner it might consider most advantageous to the dependents.

## PROHIBITION OF EMPLOYMENT OF WHITE WOMEN BY ORIENTALS

### *Saskatchewan*

Some provincial governments, under the urgings of trade-union executives, have passed laws forbidding Chinese laundrymen and restaurant keepers to employ white women, really a discrimination against the Chinese as workers. A resolution on the subject of employment of white girls

by Orientals, asking that it be forbidden by legislation, was passed by the Trades and Labor Congress in 1911 and 1912.[1] It was presented to the various legislatures by the provincial committees of the Congress and Saskatchewan responded in 1912 (c. 17) with "An act to prevent the employment of female labour in certain capacities." This law came into force May 1, 1912 and forbade white women or girls to work in or frequent any "restaurant, laundry, or other place of business or amusement owned, kept or managed by any Japanese, Chinaman or other Oriental person." At the next session (1912-13, c. 18) the prohibition was restricted to Chinese. The Supreme Court of Saskatchewan, dealing with a case which questioned the right of the province to enact the legislation, held that it was not *ultra vires* of the provincial legislature since it did not deal with naturalization or aliens, subjects assigned to the Dominion Parliament by the British North America Act, but was a law for the protection of white women and not for the exclusion of the Chinese.[2] This decision was upheld by the Supreme Court of Canada in 1914[3] and leave to appeal was refused by the Judicial Committee of the Privy Council.[4]

The act was amended in 1918-19 (c. 85), apparently to avoid reference to any nationality. The amending statute made it necessary to secure a license from the municipality for the employment of a white woman in any laundry or restaurant and municipalities were authorized to grant such licenses. When in 1925 the Regina city council refused a license to a Chinaman under this provision, he brought an action in the Court of King's Bench. The Chinaman was granted a mandamus requiring the defendant to grant

[1] *Trades and Labor Congress*, 1912, p. 107.

[2] 12 *D. L. R.* 656, Quong Wing *v.* The King.

[3] 18 *D. L. R.* 121.

[4] 23 *Can. Cr. Cas.* 136.

the license. The court said, "It would be strange if the municipalities to which has been delegated authority of granting such special licenses could now go on and maintain the discriminatory principle which the legislature had been at such pains to abolish." [1]

*Manitoba*

A statute of this type, "An act to prevent the employment of female labor in certain capacities," passed in Manitoba in 1913 (c. 19) at the request of union representatives and formally approved by the Trades and Labor Congress,[2] has not been proclaimed. A law of 1923 (c. 101, s. 33), amending the charter of the city of Winnipeg, authorized the city to pass by-laws prohibiting the employment of any female persons, except under special license, in any place owned, managed or conducted by Chinese for the reception, refreshment or entertainment of the public, or any laundry.

*Ontario*

A bill to prohibit the employment of white women by Orientals was defeated in the Ontario Legislature in 1913 but in 1914 (c. 40) an amending clause to the same effect was inserted in the Factory, Shop and Office Building Act. It was provided that no Chinese person could employ in any capacity or have under his direction or control any female white person in any factory, restaurant or laundry. This amendment was to come into force on a day named by the Lieutenant-Governor in Council but the government declined to act in the matter in 1915 [3] and in the 1920 session a labor delegation waited upon the attorney-general of Ontario and requested that the clause should be enforced.[4]

[1] Yee Clun *v.* City of Regina [1925] 3 *W. W. R.* 714.

[2] *Trades and Labor Congress*, 1913, p. 150.

[3] *Ibid.*, 1915, p. 26.

[4] *Labour Gazette*, vol. xxi, p. 2.

### *British Columbia*

The British Columbia Commission on Labor which reported in 1914, recommended the total exclusion of all Asiatics from Canada and statutory prohibition of the employment of white help by Asiatics.[1] The British Columbia Federation of Labor also urged the government to prohibit the employment of white women by Orientals [2] and in 1919 (c. 63, s. 13) an amendment to the Municipal Act forbade the employment in any municipality of white women in any restaurant, laundry or place of business or amusement owned, kept or managed by any Chinese person. But in 1923 (c. 76) this provision was repealed and the Women's and Girls' Protection Act was passed. This new law forbade white or Indian women or girls to reside or lodge in or to work in or, save as a customer, to frequent any restaurant laundry or place of business or amusement which police officials, as evidenced by certificates posted in their offices, considered inadvisable in the moral interest of the women or girls. A bill was introduced at the 1924 session to amend the Women's and Girls' Protection Act by prohibiting the employment of white girls and Orientals in the same dwelling but it failed of passage.

#### SUMMARY

The province of British Columbia is conspicuous in this type of legislation because of a number of measures directed against the Oriental worker. The province has imposed special taxation on Orientals and has endeavored to prohibit Chinese immigration but several of these measures have been declared *ultra vires*.

The British Columbia Government has also sought to

[1] *Report of the Royal Commission on Labour*, Victoria, B. C., 1914, pp. 21, 26.

[2] *Trades and Labor Congress*, 1915, p. 41; 1917, p. 72; 1918, p. 60.

exclude Oriental workers from employment on public works and public utilities and the Ontario Legislature has debarred citizens of any country which excludes Canadians from employment on its public works from being engaged on the construction of any subsidized railway in the province.

The first legislation of British Columbia with reference to the operation of coal mines, enacted in 1877, excluded Chinese and persons unable to speak English from positions of trust and responsibility. Later legislation prohibited the employment of Chinese and Japanese underground in coal mines and amendments to the law, restricting the granting of certificates of competency to persons conversant with the English language, worked to the disadvantage of the alien. In 1897 regulations were inserted in the metalliferous mines legislation which denied employment to Chinese and Japanese.

The early mines legislation of the Northwest Territories excluded persons unable to speak and read English from positions of trust and this provision has been retained by the province of Saskatchewan.

In granting compensation for accidents all provinces but Saskatchewan and Prince Edward Island, which has no compensation law, differentiate between resident and non-resident dependents of injured workmen. New Brunswick in 1908 denied compensation to dependents residing in other countries and Quebec and Nova Scotia followed. Manitoba at first restricted compensation to dependents living in the province but later, dependents living within the British Empire were made eligible. The first modern workmen's compensation act of Canada, passed in Ontario in 1914, granted non-resident dependents the same compensation that the country of their residence would give in the case of an injured workman whose dependents lived in Ontario. This new principle was adopted by Nova Scotia, Manitoba, Yukon Territory

and New Brunswick. Alberta named the father and mother of the injured workman as the only non-resident dependents entitled to compensation after the workman had lived in Canada two years, or after one year in the case of a workman not of British nationality. British Columbia authorized the payment of such compensation to non-resident alien dependents as would afford them a degree of comfort equal to that enjoyed by dependents of the same class resident in Canada.

Several provinces have passed laws prohibiting the employment of white women by Chinese in restaurants and laundries but some of these laws have not been proclaimed and others have been replaced by legislation under which municipalities have discriminated in the granting of licenses.

In all fields of labor legislation other than those indicated workers and their families are granted the degree of protection enjoyed by native workers, as proposed in the recommendation of 1919. In the absence of a system of unemployment insurance the question of discriminatory treatment of aliens in the payment of benefits does not arise.

# CHAPTER XII

## Enforcement of Labor Laws

"Each State should make provision for a system of inspection in which women should take part, in order to insure the enforcement of the laws and regulations for the protection of the employed." (Treaty of Peace: Article 427,9.)

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A health service for the workers should also be established (1919 recommendation). In the organization of such a system the general principles outlined in the recommendation of the 1923 Conference[1] should be observed.

In pre-Confederation times laws were enacted for the inspection of pearl, potash, salt pork, flour, etc., but inspection of private business in the interest of the employed was a later development, a necessary concomitant of the mines and factories acts.

The machinery for the enforcement of labor laws has reached a considerable development since the beginning of the century and especially in the two most important industrial provinces, Ontario and Quebec. The Dominion Government and all the provinces now have departments or bureaus of labor except Nova Scotia and Prince Edward Island, and of these Nova Scotia has inspection for factories and mines. Ontario established a Bureau of Labor in 1900, which was made the Trades and Labor Branch in 1916 and the Department of Labor in 1919. The New Brunswick Bureau of Labor was established in 1904 and the Manitoba Bureau in 1915. The British Columbia Department of Labor was organized in 1917 and a Deputy Min-

[1] *Cf. supra*, pp. 27-32.

ister of Labor was appointed in the Quebec Department of Labor and Public Works in 1919.

In all there are now 36 mines inspectors on the staffs of the different provinces—British Columbia has 10; Alberta, 9; Nova Scotia, 7; Ontario, 5; Quebec, 4, and Saskatchewan, 1. The factory inspectors number 62 and of these 14 are women. Ontario has 14 men and 5 women engaged in factory inspection, Manitoba has 14 men and 2 women on the staff but in that province all inspection work (including inspection of buildings, boilers and elevators) has been consolidated under the Bureau of Labor, and Quebec has 11 men and 3 women factory inspectors, Alberta has 3 men and 1 woman but the latter is employed mainly in connection with the Minimum Wage Act, and Nova Scotia and New Brunswick each have 1 male inspector.

In contrast with the evolution of labor law in England mines inspection came before inspection of factories. Indeed, the first mines inspection legislation antedates Confederation, Nova Scotia having established inspection of mines in 1864. British Columbia followed in 1877, when legal provision was made for inspection of coal mines, three decades before the factory act of that province. In Quebec, Manitoba, Saskatchewan and Alberta also mines inspection preceded inspection of factories. Laws have also been passed to provide inspection for the protection of workers in shops, navigation, lumber and construction camps, and the manufacture and storage of explosives. Early in its history the Trades and Labor Congress began to press for the appointment of building and scaffolding inspectors,[1] and in later years the unions have urged more stringent regulations upon the legislatures and have asked for better enforcement of the existing legislation.[2] The Congress of 1914 deplored

[1] *Trades and Labor Congress*, 1889, p. 23; 1893, p. 25; 1894, p. 21.

[2] *Ibid.*, 1918, p. 99; 1919, pp. 73, 88; 1920, p. 184.

" the lamentable number of deaths and disablements due to faulty construction and absence of safety regulations for the protection of electrical workers." A proposed law submitted by the International Brotherhood of Electrical Workers was adopted by the Congress and the provincial executives were instructed to urge its enactment upon the provincial legislatures.[1] Several provinces have legislation on the subject.

Women's part in the enforcement of labor laws has been limited to the factory acts and minimum wage laws. Appointment of women inspectors has been due to union influence. In 1888 and 1889 the Trades and Labor Congress resolved " that in the opinion of this Congress the interest of the female workers requires that female inspectors of factories and workshops should be appointed by the Government." [2] The same resolution was passed in 1890, 1891 and 1892,[3] and in 1895 the appointment of a woman inspector was recorded but the Congress expressed regret that the new inspector was not directly connected with labor organizations.[4] At other Congresses it was stated, with reference to the inspectors in Ontario, that " the work of the female factory inspector is equally as important and onerous as that of the male inspector while her salary is only one-half that paid to her male colleague " [5] and the Congress contended that the same salary should be paid to both. The laws of Ontario (1895, c. 50, s. 10) and British Columbia (1908, c. 15, s. 42) definitely provide for the appointment of women inspectors.

[1] *Ibid.*, 1914, p. 126.

[2] *Ibid.*, 1888, p. 15; 1889, p. 16.

[3] *Ibid.*, 1890, p. 29; 1891, p. 14; 1892, p. 24.

[4] *Ibid.*, 1895, p. 8.

[5] *Ibid.*, 1901, p. 79; 1905, p. 40.

MINES

*Nova Scotia*

In 1858 (c. 33) the Nova Scotia Legislature passed "An act for regulating the office of inspector of mines in this province," the first mining legislation in Canada to provide for the appointment of a mines inspector. The Governor in Council was to make regulations for the protection of mines and minerals and the inspector was directed to "exercise a vigilant superintendence over the mining operations" but protection of the miners was not mentioned. In a law of 1861 (c. 10) the salary attached to the office of inspector of mines was abolished and the duties of the office were vested in the Commissioner of Crown Lands. In the revision and consolidation of the statutes in 1864 (c. 25) the Governor in Council was authorized to appoint an inspector of mines, who should be "a competent, scientific, practical coal-mining engineer." In the inspection of mines, the inspector was to have due regard "both to maintaining the value of such mines and providing for and protecting the safety of the persons employed therein."

Two acts with respect to mines were included in the revision of 1873—Of Mines and Minerals (c. 9) and Of the Regulation of Mines (c. 10). The former law reenacted the inspection clause of the revision of 1864. The latter was a new law which made more specific provision for the protection of mine workers and more adequate inspection of mines. Inspectors were authorized:

(1) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Chapter relating to matters above ground or below ground are complied with in the case of any mine;

(2) To enter, inspect and examine any mine and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine;

(3) To examine into and make inquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine, and the sufficiency of any special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto;

(4) To exercise such other powers as are necessary for carrying this Chapter into effect.

Obstruction of the inspector in the course of his duties was forbidden under penalty.

The management of every mine was required to keep an accurate plan of the workings and to furnish a copy, corrected to date, to the inspector at his request. In case the inspector found any dangerous condition or practice in a mine he was authorized to give notice in writing to the management, and if it were not remedied at once he was directed to report the matter to the Commissioner of Public Works and Mines. The management could file any objection with the commissioner and in that case the matter was to be decided finally by arbitration by the commissioner, together with one arbitrator appointed by the inspector and one appointed by the mine management. The commissioner was authorized to direct the inspector to make a special report with respect to any mine accident causing loss of life or personal injury, and to make such report public. General rules to be observed in every mine were included in the act, regulations for the working of submarine areas and special rules, to be approved by the inspector, might be made in particular circumstances "to prevent dangerous accidents." One of these general rules required a daily inspection of every mine on the part of the management.

A law of 1876 (c. 10) made it unnecessary for mine managements to maintain plans of the workings in the case of mines (other than coal, stratified iron ore, shale or fire clay),

employing ordinarily less than twelve persons below ground unless especially required to do so by the commissioner.

In 1881 (c. 5) it was provided that if the inspector were not able personally to make a thorough examination of every coal mine in the province as often as necessary the Governor in Council might appoint deputy inspectors. A section was added, previously incorporated in the British Columbia Mines Regulation Act in 1877, empowering the employees to appoint two of their number to inspect the mine at least once a month and a signed report of such inspection was to be recorded in a book kept at the mine for the purpose. The inspector was directed to make a personal investigation of every fatal accident, and for that purpose he was given power to summon and examine witnesses under oath. The employees of any mine were given power in 1891 (c. 9) to appoint a committee from among their number to examine the seat of any accident causing death or personal injury.

The Commissioner of Mines was given power by an amending act of 1896 (c. 12) to waive or modify any of the special regulations for the working of submarine areas, first inserted in the revision of 1864, on report of the inspector that valuable coal areas could not be otherwise worked.

In the revision of 1900 the act Of Mines and Minerals was continued as the Mines Act (c. 18). It dealt mainly with property considerations but it was stated that the inspectors should see that there was " due regard to the safety and protection " of mine employees. The Mines Regulation Act was divided into two statutes—the Coal Mines Regulation Act (c. 19) and the Metalliferous Mines Regulation Act (c. 20). These two acts incorporated the inspection provisions of the Mines Regulation Act of the revision of 1873 (c. 10) with subsequent amendments.

The inspector's powers (extended to deputy inspectors as to coal mines in 1910 (c. 37) and as to metalliferous mines in 1913 (c. 15)) were enumerated to include the power, in case of accident, (1) to enter and inspect any mine, building or place the inspection of which seemed expedient; (2) to summon and examine witnesses; (3) to require the production of any documents bearing on the investigation and (4) to administer an oath. The provisions as to metalliferous mines were in 1911 (c. 16) extended to quarries also. In serving notice on the management of coal mines of any dangerous condition the inspectors were given power in 1917 (c. 46) to state the time allowed for rectifying it.

The new Coal Mines Regulation Act of 1918 (c. 10) made some slight changes in the inspection regulations. The provision that workmen in a mine might appoint two of their number to inspect the mine was modified by the phrase "or any two who are or who have been practical working miners and have had not less than five years' experience of underground work." Special provisions as to mine examiners were added:

23. (1) In every mine there shall be appointed by the manager, in writing, one or more competent persons who hold a certificate of competency as a mine examiner under this act, whose duty it shall be:

(a) to fire all shots in the mine, and perform all other duties prescribed by any special rules;

(b) to make such inspections and carry out such other duties as to the presence of gas, ventilation, state of roof and sides, as are required by this act and by any special rules;

(c) to have the general charge of the safety of the mine and the workmen, as required by this act or by any special rules.

(2) A mine examiner shall be required to devote his whole

time to such duties as aforesaid, but these provisions shall not apply in the case of a mine examiner in

(a) any mine in which the total number of persons employed underground at one time does not exceed thirty; or

(b) any mine exempted by the inspector on account of the special circumstances of the mine.

The clause that authorized the miners to appoint a committee to examine the seat of any fatal accident was omitted in this act but was restored the next year, 1919 (c. 74), with some modification. In 1918[1] and 1920[2] the Trades and Labor Congress passed resolutions favoring the amendment of the act to permit the miners to appoint inspectors by vote, these officials to be paid by the government.

In 1922 (c. 49), by an amendment to the Mines Act, it was provided that the Minister of Mines could order any barrier to be opened or worked on recommendation of the inspector that the opening or working of such barrier would tend to promote the safety of the mine or the workmen employed therein, or prevent waste of mineral. Previous legislation had provided that the Minister might waive or modify any of the provisions with regard to mining submarine areas on report of the inspector that valuable coal areas could not be mined otherwise and in 1924 (c. 18) the phrase was added " and that the safety of the workmen will not be endangered by the mining of the areas in the manner proposed."

### BRITISH COLUMBIA

#### *Coal Mines*

The province of British Columbia has made separate provision for coal and metalliferous mines, the former legisla-

[1] *Trades and Labor Congress*, 1918, p. 94.

[2] *Ibid.*, 1920, p. 189.

tion beginning in 1877 and the latter in 1897. The Coal Mines Regulation Act of 1877 (no. 15) authorized the appointment of "any fit persons" as inspectors of mines. The same powers of inspection were given as in the Nova Scotia act of the revision of 1873 Of the Regulation of Mines and obstruction of the inspector was likewise forbidden. On finding any dangerous condition or practice the inspector could give notice in writing to the management, requiring the same to be remedied. If this were not done immediately, report was to be made to the Minister of Mines. The management could file objection and the matter would then be decided by arbitration. Accurate plans of the workings, corrected to date, were to be kept and submitted to the inspector at his request. The inspector could be ordered to make a special report as to any accident in a mine causing loss of life or personal injury, the report to be made public when and in the manner the Minister might think expedient. These provisions were contained in the Nova Scotia act of 1873 but there was inserted a section not found in the Nova Scotia law, requiring the inspector to visit at least once in three months "every mine within his jurisdiction and every working part thereof, and all travelling roads leading to and therefrom, and all air courses." General rules were included in the act and provision made for special rules in each mine "best calculated to prevent dangerous accidents and to provide for the safety and proper discipline of the persons employed in or about the mine." One of these general rules provided that the management should make daily inspection of the workings of the mine in actual operation and another provision, copied by Nova Scotia in 1881, allowed inspection on behalf of workmen once a month at their own cost.

The requirement that the inspector should visit every mine in his jurisdiction once in three months was changed in 1888

(c. 21) to once every month. The same act also amended the rule allowing inspection of the mine on behalf of the workmen so that the inspection might be made "once or oftener in every shift, day, week or month" instead of "once at least in every month." A sub-section was added that if the report of such inspection stated "the existence or apprehended existence of any danger," the management should send a copy of the report to the inspector. In 1899 (c. 47) with a view to improving the competency of inspectors the clause providing for the appointment of "any fit persons" was amended by adding "who must be possessed of mine managers' certificates of competency."

In 1903-4 (c. 40) the following was added to the inspector's duties: "Immediately after each visit the inspector shall cause to be posted in some conspicuous place at or near the mine a statement showing what proportion of such mine has been inspected and the condition found to prevail therein."

It was also provided by this law that there should be added to section 69, which empowered the inspector in case he discovered any dangerous or defective thing or practice to give notice to the owner, and in default of immediate remedy to report to the Minister of Mines, a clause which empowered the inspector, if he thought any delay in remedying the condition would be dangerous to order the closing of the mine or part of the mine or the cessation of any work therein until the matter complained of should be remedied, the stoppage and the reasons therefor being reported to the Minister of Mines.

In 1910 (c. 34) this section was further amended by the addition of a sub-section which required the inspector, where he had reason to believe that a dangerous condition existed in any mine by reason of the approach of workings to old or abandoned workings, to report to the Minister of Mines,

whereupon the chief inspector was required to make an examination and to issue directions governing mine operations in the district affected until the dangerous condition was remedied or overcome.

In 1911 the provincial executive of the Trades and Labor Congress asked that mine inspectors should be chosen by the miners.[1] That the unions were well pleased with the mines legislation of the province is evidenced by the following from the report of the Trades and Labor Congress for 1911:

> For some years the provincial executive of the Congress has persistently advocated the government ownership of the coal mines as a means of safeguarding the lives of the miners. This agitation, combined with the strenuous efforts of the miners' representatives in the legislature, Messrs. Hawthornthwaite and Williams, has been rewarded by the placing on the statute books of British Columbia coal mine regulations for the protection of life that will bear comparison with the best in operation in any part of the world.[2]

A consolidating act, the Coal Mines Regulation Act, was was passed in 1911 (c. 33) and some new inspection provisions included. The Minister of Mines could order special investigations of mining operations to be made by a mining engineer.

There has been no further change in the labor aspect of the coal-mines legislation despite union demands. In 1915 the British Columbia Federation of Labor asked that mine inspectors should be paid by the government, that inspectors should be elected by the miners of the locality, and that first aid corps and ambulance boxes should be provided in all

[1] *Trades and Labor Congress*, 1911, p. 19.

[2] *Ibid.*, p. 21.

working places. Further, it was claimed that "the gigantic struggle carried on by the miners of Vancouver Island was in some respects the result of, and was much aggravated by the non-enforcement of the acts now in force." [1] In 1917 the unions requested "the strict enforcement of the mines regulation acts and the removal of all officials who have been proven incompetent or neglectful." [2]

### *Metalliferous Mines*

Inspection of metalliferous mines in British Columbia was first provided for in 1897 (c. 27) in "An act for securing the safety and good health of workmen engaged in or about the metalliferous mines of the province of British Columbia by the appointment of an inspector of metalliferous mines," or the Inspection of Metalliferous Mines Act. The act made provision for an inspector of metalliferous mines of at least seven years' practical experience in mining. The Minister of Mines, on receipt of reliable information as to the health and safety of workmen employed in any metalliferous mine in the province, or whenever he considered an inspection necessary, could instruct the inspector to examine the mine and report to him on the condition. The management was given the right to appeal to the Minister of Mines on any difference between them and the inspector. On receipt of notice of any serious accident in a mine the Minister was required to instruct the inspector to enquire into the cause. The management was required, under penalty, to admit the inspector, to render him necessary assistance and to give immediate notice to the Minister or the inspector of any loss of life or serious accident. A section was inserted providing that if the inspector found a dangerous matter or prac-

[1] *Trades and Labor Congress*, 1915, p. 41.

[2] *Ibid.*, 1917, p. 70.

tice he was to give notice in writing to the owner, ordering the same to be remedied. The act directed that plans of mines should be kept by mine operators and placed before the inspector at his request. General rules were incorporated in the act, one providing for a daily examination of the mine by the management.

The section with regard to the finding of any dangerous condition by the inspector was amended in 1899 (c. 49) to provide that he should give immediate notice to the management. A new clause directed that the inspector should immediately post up, at the mouth of the mine or in some other conspicuous place, for the information of the employees a copy of the notice given to the owner. The appointment of more than one inspector was authorized in 1901 (c. 37) and in 1918 (c. 55) the inspector was directed to post in some conspicuous place about each mine examined a copy of his report to the Minister of Mines.

### *Ontario*

The Mining Operations Act of 1890 (c. 10), which applied only to mines in which more than six persons, other than the owner, were employed, provided for the appointment of inspectors. They were given the same general powers as in the Nova Scotia legislation of the revision of 1873. The clause with reference to any dangerous condition or practice provided that the inspector should designate the period of time allowed for remedying the same. The management, on request by the inspector, was required to produce plans of the mine and to mark progress up to the time of inspection. Inspectors might be required to submit a special report with respect to any accident in a mine which had caused loss of life or personal injury, the report to be made public at such time and place as the Minister in charge deemed expedient. This act did not contain the provision

for inspection by the workers, incorporated in the British Columbia Coal Mines Regulation Act in 1877 and in Nova Scotia in 1881.

The Mines Act of 1892 (c. 9) incorporated the chief provisions of the Mining Operations Act of 1890 and in 1894 (c. 16) "An act relating to mines and mining lands" extended the application of the act to roast yards and smelting furnaces and empowered the inspector, in conducting an enquiry into the cause of loss of life or personal injury in or about a mine, to take evidence on oath. The inspection provisions, by an amendment of 1896 (c. 13), were made to apply to all mines, quarries and pits, oil, gas and salt wells and smelting works. The powers of the inspector were broadened in 1897 (c. 8) by changing the general power "to exercise such other powers as may be necessary for carrying this part into effect" to read "to exercise such other powers as may be necessary for ensuring the health and safety of miners and all other persons employed in or about mines and mining works." Among the new general rules added, by an amendment of 1900 (c. 13), was one providing that the management should make a daily inspection of the mine to ascertain that all was in "a safe and efficient working condition."

The legislation seems to have been objectionable to some of the mine operators for in 1901 the parliamentary committee of the Canadian Manufacturers' Association reported: "Your committee was also asked to support the request of certain mining interests of the Province of Ontario, asking for a disallowance of the Ontario Mining Act. We believed, however, that we had not sufficient information on the subject, and decided to take no action in the matter." [1]

A new section in the consolidating act of 1908 (c. 21)

[1] *Industrial Canada*, November, 1901, p. 108.

provided that inspectors should not be subpoened for attendance at any court and should not be required to produce any document in their official custody without an order of the court or, in matters before the mining commissioner, without his direction. The inspector and certain other officers also, it was provided, should not be bound to disclose any official information which a member of the executive council might certify ought not to be divulged in the public interest. The same law made the mining commissioner and every inspector ex-officio a justice of the peace for every mining district in the province.

In 1909 (c. 17) there was passed "An act to amend and improve the law respecting mine accidents and the operation of mines." This law empowered the inspector and any person authorized to act on his behalf to be present and to examine or cross-examine any witness at every inquest held concerning a death caused by an accident at a mine. If the inspector or some one on his behalf was not present the coroner was required before proceeding with the evidence to adjourn the inquest and to give the deputy minister of mines not less than four days' notice as to the time and place at which the evidence would be taken.

A resolution of the Trades and Labor Congress of 1915 presented by the Cobalt Miners' Union complained of the non-enforcement of the provisions requiring installation of apparatus to lay dust and to give suitable ventilation.[1] The subject was also brought to the attention of the Congress in 1920 when the appointment of a practical miner as mine inspector was requested.[2]

[1] *Trades and Labor Congress*, 1915, p. 115.

[2] *Ibid.*, 1920, p. 102.

*Quebec*

The Quebec General Mining Act of 1880 (c. 12), which applied to the mining of gold and silver in the province, authorized the appointment of inspectors and empowered them to "examine the pits, shafts, tunnels, subterranean passages or other mining works or excavations constructed or commenced in any manner whatsoever, and require, from the proprietors . . . and from their employees all the facilities and assistance necessary for that purpose." Prosecutions could be brought before the inspectors and they could "in general, settle any difficulty, matter or thing arising from the provisions of this act, or in contravention thereof, as well as of the regulations made under such provisions."

The scope of the act was enlarged in 1888 (c. 15) to include "all quarries of stone of whatever kind and all stones and rocks . . . in which are found gold, silver . . . and any mineral substance having an appreciable value." The sections dealing with the inspection of mines were reenacted with no material change in the consolidating act of 1890 (c. 15) but new provisions were made in 1892 (c. 20). Inspectors were to be mining engineers of at least five years' experience. Regulations might be made by the Lieutenant-Governor in Council "respecting the sanitary conditions and safety of the works in mines so as to protect the life and health of the workmen therein employed." Such regulations were to be posted up in the most conspicuous places of the mine, in conformity with the instructions of the mining inspector.

A new clause was inserted in 1914 (c. 20) which gave the inspector power to order any mine management to have remedied within a certain lapse of time specified by the inspector any state of affairs or any practices which he might consider "dangerous in the working of any mine, quarry or

workshop for reducing mineral." No further inspection provisions have been enacted.

*Northwest Territories*

The earliest regulation of mines in the Northwest Territories, the Coal Mines Regulation Ordinance of 1893 (no. 5), contained sections on inspection. This ordinance provided for the appointment of inspectors with the powers and duties stated in the earlier legislation of other provinces, as to "all matters and things connected with or relating to the safety of the persons employed in or about the mine." The employees were authorized to appoint one or two of their number to inspect the mine at their own cost and to record their report in a book kept at the mine for the purpose. General rules as to the operation of the mine were included in the ordinance and such special rules were to be established in every mine as would best "prevent dangerous accidents and provide for the safety and proper discipline of the persons employed in or about the mine."

*Manitoba*

The Mines Act of 1897 (c. 17), which did not apply to any mine unless more than six persons other than the owner were employed underground, nor to stone quarries, gave to inspectors the same general powers as were given in the Nova Scotia legislation of 1873. As in the acts of the other provinces, obstruction of the inspector was forbidden and mine owners were required to furnish necessary information, including plans, to the inspector. He could require any dangerous practice to be remedied within a specified time and might also be directed to make a special report with regard to any accident causing loss of life or personal injury. These provisions still apply.

### *The Yukon*

Provision for inspection of mines was included in the first mining legislation of the Yukon Territory, the Miners' Protection Ordinance of 1901 (no. 38). As in the other provinces, general powers of inspection, special powers for investigation and the power to order dangerous practices remedied, were given. The miners could appoint two of their number to examine the mine from time to time at their own cost and they could also appoint a person to examine the seat of any accident resulting in death or personal injury.

### *Alberta*

The first legislature of the province of Alberta in 1906 (c. 25) passed a Coal Mines Act, authorizing the appointment of provincial and district inspectors of mines, who should be persons with mine managers' certificates of competency. The usual duties and powers with regard to examination and reporting on mines were given in the act and obstruction and neglect to furnish information on the part of the employer were penalized. Mine owners were required to keep plans of the workings and to produce them at the inspector's request, and in addition to furnish the provincial inspector yearly an accurate plan of the workings. The inspector was empowered, in case he discovered any dangerous or defective thing or practice threatening bodily injury, to give written notice to the owner and to require the same to be remedied. If this were not done, a report to the provincial inspector was required. The owner could forward to the Minister of Public Works a statement of his objections but a decision reached by arbitration was to be final. The Minister was authorized to investigate any accident in a mine or any other matter connected with its workings or to direct the inspectors to make an investigation. Certain powers were granted the inspectors for such enquiries. Per-

sons employed in a mine might appoint two of their own number from time to time to inspect the mine at their own cost, and the owners were directed to allow the persons so appointed to go into every part of the mine and inspect it thoroughly at least once in every month. An officer of the mine might be present during the inspection. It was required that a signed report of the inspection should be recorded in a book to be kept at the mine. The miners could appoint a committee to examine the seat of any accident.

A new Mines Act was passed at the first session of 1913 (c. 4), which applied to all mines in the province. The inspection clauses of this law were practically the same as those of the 1906 legislation. The section permitting inspection by workmen employed in the mine was amended to provide that a committee of two practical working miners, resident in the province and of not less than five years' experience in underground work might be appointed. A change in 1919 (c. 4, s. 42) provided that the committee of miners might be men who had been practical miners as well as those employed at the time.

### *Saskatchewan*

When Saskatchewan was set apart from the Northwest Territories as a new province in 1905 the Coal Mines Regulation Ordinance of the Territories became the provincial mining law. At the second session of 1917 (c. 10) the Mines Act., applying to all mines in the province, was passed. This act gave the same powers of inspection as in the Alberta act, also based on the ordinance of the Northwest Territories, but the clause in the Alberta act granting special powers of enquiry in accidents was not included in the Saskatchewan act.

FACTORIES

*Ontario*

The Ontario Factories Act, passed in 1884 (c. 39), applied only to establishments having more than 20 employees. The powers and duties of the factory inspector as defined by the Ontario law, with the exception of the clause authorizing the inspector to summon witnesses and to administer an oath, were taken from the English act of 1878 (c. 16) and the laws of other provinces conform closely to the Ontario act in this respect. The inspector was given power:

(1) To enter, inspect and examine at all reasonable times by day or night any factory and any part thereof when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory.

(2) To require the production of any register, certificate, notice or document required by this Act to be kept, and to inspect, examine and copy the same.

(3) To take with him in either case a constable into a factory in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty.

(4) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with, so far as respects the factory and the persons employed therein.

(5) To examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory, or whom he has reasonable cause to believe to be or to have been, within the two preceding months, employed in a factory, and to require such person to be so examined, and to sign a declaration of the truth of the matters respecting which he is so examined.

(6) For the purposes of any investigation, inquiry or examination made by him under the authority of this Act to administer an oath and to summon any person to give evidence.

(7) To exercise such other powers as may be necessary for carrying this Act into effect.

In dealing with questions of sanitation the inspector was empowered to take a physician or health officer with him into factories. The act authorized the Lieutenant-Governor in Council to make regulations permitting the inspector to exempt women and children from the provisions of the act governing their employment when he was satisfied that some accident, occurrence, custom or exigency of the trade necessitated employment for longer hours.

Certain restrictions were imposed upon the inspector in the exercise of his powers. Before entering any place used as a dwelling as well as a factory without consent of the occupier, the inspector was required to have written authority from the Lieutenant-Governor in Council or a warrant from a justice of the peace or a police magistrate. As in the English law, the inspector was required to produce his certificate of appointment when applying for admission to a factory, if so requested by the employer.

It should be noted that under the above the inspector could grant exemptions from the provisions governing the employment of women and children only if the regulations permitted him to do so. In 1889 (c. 43) this was changed to permit the inspector to grant such exemptions unless precluded by regulation. This same law changed the definition of factory from an establishment employing more than 20 persons to one employing more than five.

Although the Factories Act had passed the legislature in 1884 the annual Trades and Labor Congress of 1886 found it necessary to appoint a committee to interview Hon. Oliver Mowat, the Attorney-General, with a view to bringing the law into effect[1] and it was proclaimed that same year.

[1] *Trades and Labor Congress*, 1886, pp. 11, 28-29.

Discussion at the Trades and Labor Congress in 1888 made it quite evident that there was considerable dissatisfaction among trade unionists with the administration of the act. The report of that year stated:

It was charged that some of the inspectors were on too friendly terms with the manufacturers to be in a position to condemn them when they were discovered breaking the law, and the system pursued was objected to on the grounds that not only had each inspector too much territory to cover, but they were each confined to a division, and if an inspector neglected his duty his entire division suffered continuously. From experience many members could not call to memory one instance where an inspector had passed through a factory without being "in tow" of the foreman or proprietor, who were always previously acquainted of the intended visit, and consequently an employe was unable to make any grievance known where such existed without placing his or her situation in jeopardy.[1]

The manufacturers evidently had no complaint. The secretary stated with regard to the act at their annual meeting in 1889 that its provisions had not proven irksome, that the wisdom of the Association in not opposing the measure had been justified and that the three inspectors appeared to have been impartial.[2]

Several changes, suggested apparently by the Toronto Trades and Labor Council,[3] were made in the law in 1895 (c. 50). It was required that written notice of fire, accident occasioning any bodily injury which prevented work for more than six days, explosion or any accident causing death or fatal injury should be sent to the inspector. In this law also provision was made for the first time for the appointment of a woman inspector, and bakehouses and bake-

[1] *Trades and Labor Congress*, 1888, p. 15.

[2] *Canadian Manufacturer*, March 15, 1889, p. 178.

[3] *Trades and Labor Congress*, 1895, p. 9.

shops were added to the schedule of industries covered by the act. The first woman inspector was appointed the same year, provision for the appointment being made by an amendment to the Factories Act.

At the meeting of the Trades and Labor Congress in 1895 it was resolved: "That owing to the dissatisfaction existing by the manner in which the factory acts are carried out by some of the inspectors in Ontario, this Congress request the government to change from time to time the inspectors from one division to another throughout the province." [1] The following year the Ontario executive of the Congress reported that this change had been effected and in their view had made for better enforcement of the act.[2]

The Commissioner appointed by the Dominion Government in 1895 to enquire into the sweating system reported that "the Factories Acts, both in Ontario and Quebec, appear to be fairly well enforced and to give general satisfaction in their working both to employers and employees. A greater number of inspectors, however, is needed and more frequent publication of reports would be an advantage." [3] But at another point [4] the Commissioner states that there was "considerable difficulty in enforcing the provisions forbidding the employment of children under the factory age."

In 1897 the Congress expressed further dissatisfaction with factory inspection in the larger manufacturing centers. It was urged that more inspectors should be appointed as the work of the staff had been increased by their duties under the Shops Regulation Act and the Bake Shops Act and that resident inspectors should be appointed in the larger cities.[5]

[1] *Ibid.*, 1895, p. 26.

[2] *Ibid.*, 1896, p. 8.

[3] *Sessional Papers*, 1896, vol. xi (no. 61), p. 9.

[4] *Ibid.*, p. 8.

[5] *Trades and Labor Congress*, 1897, pp. 10, 19, 22.

Similar statements as to the lax enforcement of the Factories Act and the inadequate number of inspectors appeared in the proceedings of the Congress quite regularly for some years.[1]

The powers of the inspectors were considerably broadened by a law of 1901 (c. 35) which added the following clause requested by the Trades and Labor Congress:

> The owner, proprietor or manager of any factory hereafter established and to which this Act applies shall not begin operations until he shall have received from the Factory Inspector a certificate of inspection of the factory and a permit to operate the same; and any such person violating the provisions of this section shall be liable to the penalties provided for in section 19 of this Act.[2]

The appointment of an additional inspector in 1902 [3] was not sufficient to satisfy the unionists, and they pressed for further additions to the staff of inspectors. When in 1907 the government was considering the establishment of four new inspectorships, the Canadian Manufacturers Association was apprehensive that trade unionists would be appointed and that they might "use their authority to act as spies for the union." The Association informed the members of the Cabinet that they were strongly of the opinion that the inspectors should be chosen outside the membership of any association of employers or manufacturers or of any labor union.[4] However, it was reported at the annual meeting of the Association the following year that "notwithstanding this vigorous protest, two of the appointees were radical union men. Your Committee feel in duty bound to state, however,

[1] *Trades and Labor Congress*, 1898, pp. 11, 27; 1900, p. 26; 1901, p. 48; 1902, pp. 33, 61; 1903, pp. 26, 43; 1904, pp. 20, 21, 22; 1905, p. 24.

[2] *Ibid.*, 1900, p. 26.

[3] *Ibid.*, 1903, p. 26.

[4] *Industrial Canada*, vol. viii, 1907-8, p. 214.

that thus far no complaints have been received to indicate that these men have tried to abuse their positions." [1]

A special committee on child labor appointed by the Ontario Legislature in 1907 reported that the law in regard to the employment of children in factories and shops had been well enforced, that in general employers were disposed to cooperate in lessening the employment of children of tender years and that conditions had been greatly improved.[2]

The unions in Ontario soon began to petition for more careful inspection of foundries, especially of brass foundries,[3] and to have "all laundries open to public patronage" brought under the Factories Act.[4] In response to this agitation an amendment of 1911 (c. 70) defined a public laundry employing one or more persons as a factory under the act. In 1911 and 1912 the unions were again asking for more factory inspectors [5] and also for inspection of mining and lumber camps and in 1913 for systematic inspection of all construction camps.[6]

In 1913 (c. 60) a new act was passed, combining the factory and shop legislation and adding new legislation for the regulation of office buildings. The provisions of the act did not apply to factories employing five persons or less. The duties of the inspectors under this act were the same as in the old, but their powers were extended to shops, bakeshops and office buildings. The submission of plans to the inspector and the securing of his approval were required before the building or alteration of a factory could be proceeded with. By the same law inspectors were authorized

[1] *Ibid.*, vol. viii, 1908-9, p. 220.

[2] *Labour Gazette*, vol. vii, p. 1123.

[3] *Trades and Labor Congress*, 1910, p. 47.

[4] *Ibid.*, p. 48.

[5] *Ibid.*, 1911, p. 66; 1912, p. 33.

[6] *Ibid.*, 1913, p. 39.

to enter, inspect and examine at all reasonable times by day or night any premises they might have reason to believe were being used as a factory, shop, bakeshop or office building.

A resolution of the Trades and Labor Congress in 1914 favored the appointment of a foundry inspector who should be a member of the moulders' union.[1]

In 1918 (c. 44) the act was extended to every factory operated by machinery rather than, as previously, only to factories employing more than five. It was also provided that the requirement as to the submission of plans for the erection or alteration of any factory building to the inspector should be extended to apply to any building over two stories in height planned for use as a shop or office building. Inspectors were also empowered to require the assistance of constables when they had reasonable cause to believe they might be resisted in the inspection of any factory, shop, bakeshop or office building.

### *Quebec*

The Quebec Factories Act of 1885 (c. 32) to make "provision for protection of the life and health of persons employed in factories" in that province gave inspectors practically the same powers as the Ontario act of the previous year and was likewise limited to factories employing more than 20 persons. This limitation was deleted from the act by an amendment of 1888 (c. 49).

In the second session of 1890 (c. 26) the section authorizing the inspector to take health officers into factories was replaced by one authorizing the Lieutenant-Governor in Council to appoint sanitary officers to have special charge of the supervision of sanitary conditions. These sanitary officials, it was provided in 1893 (c. 28), should be ex-officio

[1] *Trades and Labor Congress*, 1914, p. 88.

members of the provincial Board of Health. By an amendment of 1894 (c. 30) sanitation in industrial establishments was placed under the control of the provincial Board of Health and authority was given for the appointment of sanitary physicians, under the direction of the Board, to supervise industrial establishments in this regard. These officers were required to make an annual report and special reports whenever called upon and were given the same powers of entry and examination as factory inspectors. This same act empowered the Lieutenant-Governor in Council to exempt such industrial establishments as he deemed proper from the operation of the act and he might also "determine the special prescriptions necessary for the safety of employees in industrial establishments." Such regulations might be modified and applied, either in whole or in part, to all industries or certain methods of work. The provision that all prosecutions under the act should be instituted by an inspector was modified in 1900 (c. 23) to permit of prosecution by any others who might deposit twenty dollars with the person issuing the summons as security for payment of the costs of prosecution.

While these changes were being made with respect to inspection of sanitary conditions, the trade unions were urging that more inspectors should be added to the original staff of three.[1] The unionists were not at all satisfied with the administration of the act. In 1893 they asked for an annual report from the inspectors with some account of the factories visited and the conditions found [2] but the only response was an amendment of 1893 (c. 28), authorizing the appointment of a chief inspector and one or more inspectors.

In 1894 the Quebec executive committee reported to the

[1] *Ibid.*, 1891, p. 18; 1892, p. 18.

[2] *Ibid.*, 1893, p. 17.

Trades and Labor Congress that "in justice to the other provinces of the Dominion it should be publicly known that in the province of Quebec there is neither factory inspection nor enforced regulations concerning these establishments." [1] This was followed by other resolutions expressing dissatisfaction with the work of the inspectors and the uncertainty as to their powers,[2] but in 1896 the executive committee reported that two women inspectors had been appointed,[3] and the president of the Congress acknowledged indebtedness to Her Excellency Lady Aberdeen, "to whose energetic efforts we owe that reform so long sought for by this body—the appointment of female factory inspectors in the interests of women workers in the Province of Quebec." [4] This gain prompted the Congress to urge upon the government the appointment of more inspectors,[5] and in 1913 the staff consisted of eleven inspectors—eight men and three women. The trade unionists were displeased with the rate of progress, and they charged that factory inspection in the province was completely disorganized, and asked for an investigation by a commission.[6] Two inspectors were added in 1914,[7] and then the Congress began an agitation for the examination of candidates for the position of factory inspector, better salaries for inspectors, and the appointment of a deputy minister of Labor to control the department under the Minister's direction.[8] The appointment of additional inspectors was

[1] *Trades and Labor Congress*, 1894, p. 8.

[2] *Ibid.*, 1894, p. 22; 1895, p. 25; 1896, p. 24.

[3] *Ibid.*, 1896, p. 7.

[4] *Ibid.*, 1896, p. 5.

[5] *Ibid.*, 1897, p. 18; 1909, p. 23; 1911, p. 65; 1912, pp. 36, 79; 1913, pp. 41, 143.

[6] *Ibid.*, 1913, p. 143.

[7] *Ibid.*, 1914, p. 25.

[8] *Ibid.*, 1916, p. 134; 1917, p. 121; 1918, pp. 47, 146.

recorded in 1918 and 1919[1] and in the latter year (c. 14) the office of deputy minister of Labor was established and the chief factory inspector appointed to the position.

About 1909 the trade unions in Quebec began to urge the full application of the factory laws to foundries[2] and, under Article 3852 of the Revised Statutes of Quebec 1909, a number of regulations were established for the protection of workers employed in foundries. The enforcement of the regulations was not such as to please the trade unions,[3] and they pressed for the appointment of special foundry inspectors.[4]

The inspectors of industrial establishments were authorized by the legislation of 1918 (c. 53), which established one day of rest in seven for employees in hotels, restaurants and clubs, to make inspections of such places. Prosecutions were to be taken by inspectors.

In the Quebec Public Health Act of the first session of 1922 (c. 29), which established the provincial Bureau of Health, special sections were included as to health in industrial establishments, empowering the Lieutenant-Governor in Council to make regulations for securing health in industrial establishments and charging the sanitary physicians and municipal sanitary authorities with the duty of carrying them out.

### *Manitoba*

The Manitoba Factories Act of 1900 (c. 13) authorized the appointment of male and female factory inspectors and assigned to them precisely the same duties as the Ontario act of 1884. The act applied only to factories where more than four persons were employed.

[1] *Ibid.*, 1918, p. 47; 1919, p. 78.

[2] *Ibid.*, 1909, p. 71.

[3] *Ibid.*, 1910, p. 25.

[4] *Ibid.*, 1912, pp. 36, 79; 1913, pp. 41, 141.

Factory inspection in Manitoba seems to have been no more satisfactory to the trade unions than in the older provinces. In 1903, the Manitoba executive committee of the Trades and Labor Congress directed the attention of the government to the non-enforcement of the Factories Act [1] and again in 1907 the committee reported that the government had appointed only one factory inspector, that his salary was inadequate and that the law was not enforced. In 1909 and 1911 the committee complained that the inspector did not give his full time to factory inspection [2] and in the latter year responsible ministers promised a better enforcement of the act.[3] But in 1913 the committee reported that there had been no improvement [4] and this, as was stated in 1914, "in spite of repeated demands, backed by the verdicts of coroners' juries that death had occurred as a consequence of the non-enforcement of the act." [5] In June, 1914, one month before the provincial election, two inspectors—a man and a woman—were appointed.

In 1915 (c. 24) an amendment to the act required that in case of death within 30 days caused by an injury received in a factory, the proprietor should send a written notice of the death to the factory inspector within 24 hours. The same amending act made factory inspectors and their office staffs incompetent to give testimony in any civil case with regard to information obtained in the exercise of their duties. An amendment of 1916 (c. 41) extended the application of the act to factories employing three or more persons, instead of five or more as before, and also to laundries

[1] *Trades and Labor Congress*, 1903, p. 27.

[2] *Ibid.*, 1909, p. 19; 1911, p. 73.

[3] *Ibid.*, 1911, p. 27.

[4] *Ibid.*, 1913, p. 34.

[5] *Ibid.*, 1914, p. 34.

owned or operated by Chinese, as had been requested by the unions.[1] An amendment as to injuries by fire or accident was made in 1918 (c. 27) whereby notice was to be sent to the Bureau of Labor within 24 hours. In case of accident likely to prove fatal, immediate notice was required.

*Nova Scotia*

The Nova Scotia Factories Act, which was urged upon the government by the Trades and Labor Council of Halifax,[2] was passed in 1901 (c. 1) but Nova Scotia was the last of the provinces to provide for the enforcement of its factories legislation, the law being left in abeyance while the provincial executive committee of the Trades and Labor Congress reported year after year that no action had been taken, despite occasional government promises.[3] It was not until February, 1908, that an inspector of factories was appointed. The act provided for the appointment of men and women factory inspectors and assigned to them the same duties as those of the 1884 Ontario law, given above. Nova Scotia also followed Ontario in empowering inspectors to take physicians, health officers or other local sanitary authorities into a factory when dealing with questions of sanitation and restrictions imposed upon the inspectors in the exercise of their powers were the same as in the Ontario act. Any building or part of a building could be exempted by proclamation of the Governor in Council from application of the act for a limited or indefinite period.

In 1915 (c. 27) an amendment to the Factories Act made provision for sanitary and safety regulations for moulding shops. Enforcement of the act, when it did come, was not such as to elicit union approbation, and in 1919 the Nova

[1] *Ibid.*, 1912, p. 33.

[2] *Ibid.*, 1901, p. 49.

[3] *Ibid.*, 1902, p. 42; 1903, p. 21; 1904, p. 25; 1907, p. 19.

Scotia Federation of Labor was asking for "more and better inspection of factories." [1] As yet the province has not appointed a woman inspector.

*New Brunswick*

The trade unions of New Brunswick made their first effort to secure the enactment of labor legislation in that province in 1903, when they asked for a factory law and the appointment of a factory inspector.[2] They succeeded in having a bill introduced in the legislature in 1904 [3] but because of "great differences of opinion" the legislature decided to refer the matter to a commission (1904, c. 14). The Factories Act, which was passed in 1905 (c. 7), followed the legislation in other provinces with regard to the appointment of factory inspectors and their duties and powers. The application of the act was limited to factories employing ten or more, bakehouses and laundries being included, but not any lobster, fish or fruit canning establishments outside of cities and towns.

It was enacted in 1909 (c. 42) that no person should be continued in the position of factory inspector after he had reached the age of 70 years. The inspectors were also required to submit semi-annual reports, indicating the factories in which conditions were not according to law or in which accidents had occurred during the previous six months, together with some account of such accidents and illegal conditions and any other matters that might seem worthy of mention. The law provided that these reports should be brought before the legislative assembly as soon as possible after the opening of the session.

[1] *Trades and Labor Congress*, 1919, pp. 82-83.

[2] *Ibid.*, 1903, p. 22.

[3] *Ibid.*, 1904, p. 24.

The consolidated Factories Act of 1920 (c. 54) provided that the Workmen's Compensation Board should be the authority to appoint the factory inspectors and to direct their work, instead of the Lieutenant-Governor in Council as in the original act. The 1905 act had not applied to canning establishments outside of cities and towns and that exemption was extended by the 1920 act to any cannery in the province. An amendment of 1924 (c. 7) provided that the factory inspector should be notified of the operation of any portable sawmill or lathmill.

From the trade-union viewpoint, enforcement of the Factories Act was unsatisfactory in New Brunswick also, only one inspector having been appointed as late as 1916. In that year the provincial executive committee of the Trades and Labor Congress asked for the appointment of additional inspectors, one to be a woman.[1] The province has only one factory inspector. No woman inspector has been appointed.

### *British Columbia*

The British Columbia Factories Act, passed in 1908 (c. 15), applied to "any building, workshop, structure or premises of the description mentioned in Schedule A to this Act in which five or more persons are employed." The Lieutenant-Governor in Council by proclamation could add to or remove from the list in the schedule. The law authorized the appointment of male and female factory inspectors and assigned to them the duties indicated in the earlier legislation of other provinces. Employers were required to keep a register of work given out to be done outside the factory and the inspector, as far as possible, was to see that the work was done under sanitary conditions. The inspector was permitted to take physicians or health officers with him when inspecting the sanitation of factories and proprietors

[1] *Ibid.*, 1916, p. 76.

were required to send the inspector notice of any fire or accident occasioning bodily injury to an employee. If an employee were fatally injured the employer was obliged to forward a written statement of the accident to the inspector within 24 hours and notice of any explosion, whether causing injury or not, had also to be forwarded within the same period. An amendment of 1910 (c. 18) stated that factory inspectors, during their tenure of office, should not be competent to give testimony in any civil cause with regard to information obtained in the discharge of their duties.

The British Columbia executive of the Trades and Labor Congress found it necessary, in 1909, to ask the provincial government to consider "the necessity of the appointment of a factory inspector."[1] In 1911 the unions expressed much dissatisfaction with the administration of the law and asked for the appointment of more inspectors.[2] The British Columbia Royal Commission on Labor, moreover, reporting in 1914, favored a more stringent enforcement of the Factories Act and the appointment of more women inspectors.[3]

In 1915 (c. 25) the definition of factory was enlarged, bringing within the scope of the act all factories employing three or more persons rather than five as in the original act. All laundries operated "for profit" were specifically brought within the scope of the act in 1919 (c. 27) and "whether three or more persons, or less than three persons, or any persons are employed therein . . . and the provisions of this act shall apply to every such laundry." Difficulty was experienced in the inspection of laundries operated by Chinese as the proprietors put forward the defence that there were

[1] *Trades and Labor Congress*, 1909, p. 14.

[2] *Ibid.*, 1911, p. 19.

[3] *Labour Gazette*, vol. xiv, p. 1190.

no employees for all were partners in the enterprise.[1] In 1920 (c. 28) the phrase " whether or not any person is employed " was substituted for that in the 1919 act.

A clause was added in 1922 (c. 25) with reference to procedure in prosecutions under the act which provided that no prosecution should be instituted without leave of an inspector.

### *Saskatchewan*

In Saskatchewan the provincial executive of the Trades and Labor Congress urged the passing of a factory act in 1908 and 1909,[2] and the legislature responded in 1909 (c. 10), appointing as inspector the nominee of the Regina Trades and Labor Council.[3] The scope of the Factories Act, as indicated in the definition of " factory " and applying where more than five persons were employed, was identical with that of the British Columbia law passed in the preceding year, and the clauses defining the inspector's powers in the Ontario act, given above,[4] were embodied in the Saskatchewan law without change. The inspector was authorized to secure the assistance of health officers for the inspection of sanitary conditions under the regulations of the act, and to give directions as to the means of extinguishing fire. Fire or accident causing any employee bodily injury so as to prevent his working for more than six days, and any explosion in a factory, were to be reported to the minister in charge of the administration of the act but in 1910-11 (c. 41, s. 6) it was required instead that these reports should be sent to the inspector. This amendment also changed the definition of factory so that it applied to

[1] *Trades and Labor Congress*, 1920, p. 122.

[2] *Ibid.*, 1908, pp. 18-19; 1909, p. 18.

[3] *Ibid.*, 1910, p. 20.

[4] *Cf. supra*, p. 430.

places where more than three persons were employed instead of five as in the original act and in 1913 an order-in-council provided for the inspection of construction camps. The Saskatchewan executive committee of the Trades and Labor Congress asked for more rigid enforcement of the law in 1914[1] and in 1918 that the act should apply to all grain elevators regardless of the number of employees.[2] This latter request was granted by an amendment in 1919-20 (c. 10). In 1923 (c. 60) a section was added to the act empowering the Lieutenant-Governor in Council to make "regulations respecting the prevention of accidents in factories and generally for the purpose of carrying out the provisions of this act according to their true intent and meaning and of supplying any deficiency therein." The administration of the Factories Act in Saskatchewan has occasioned much less criticism from organized labor than has generally been the rule in other provinces.

### *Alberta*

In 1915 the Alberta Federation of Labor asked the provincial government for a "Factories Act covering sanitation and ventilation of workshops and factories,"[3] and in 1917 (c. 20) the legislature passed the Factories Act, which applied to shops, bakeshops and office buildings in cities and towns having a population exceeding 5,000 and to all factories in the province employing more than five persons. The act empowered the Lieutenant-Governor in Council to appoint men and women factory inspectors and prescribed the duties set forth in the earlier factory laws of other provinces. Inspectors were authorized to take a medical officer of health or sanitary inspector into any premises and

[1] *Trades and Labor Congress*, 1914, p. 36.

[2] *Ibid.*, 1918, p. 55.

[3] *Ibid.*, 1915, p. 44.

were required to obtain a warrant from a justice of the peace before entering any place actually used as a dwelling without the consent of the occupier. Written notice was to be sent to the chief inspector within 24 hours after any explosion or if any person were killed or injured in a manner likely to prove fatal. Notice of fire and of any accident causing bodily injury and preventing work for more than six days was also to be forwarded.

Changes were made in the legislation in 1918 (c. 32). The amendment excluded drug stores from the operation of the Factories Act and struck out the clause which designated a factory as a place where five or more persons were employed and also the clause which placed shops operated only by the employer's own family outside the operation of the act. The Alberta Federation of Labor asked for more rigid enforcement of the law in 1919 and 1920 and for the appointment of additional inspectors [1] and in 1923 (c. 5, s. 4) it was provided that inspectors appointed as inspectors in the Bureau of Labor should have the powers of inspectors under the Factories Act.

### STORES, WORKSHOPS AND BAKESHOPS

#### *Ontario*

The Ontario Legislature passed in 1892 (c. 54) "An act for the protection of persons employed in places of business other than factories." This law did not apply to places of business the employees of which were members of the same family or did not number more than five or to establishments that did not employ women and girls. Apart from these restrictions the act applied to every establishment not covered by the Factories Act for the sale or manufacture of goods and to every kind of business employing women or girls. It

[1] *Ibid.*, 1919, p. 88; 1920, p. 124.

made provision for ventilation and sanitary conveniences and required municipal councils to appoint inspectors and to make regulations with respect to their conduct and duties.

Apparently the municipalities paid little attention to this legislation for in 1895 (c. 51) it was provided that if a municipal council should receive a written application from 50 electors requesting the appointment of inspectors for the enforcement of the act of 1892 and should not comply within 90 days, the Lieutenant-Governor in Council could appoint two inspectors at the expense of the municipal corporation and fix their salaries and, if deemed necessary, make regulations as to their duties, such regulations to take precedence of any municipal rules inconsistent therewith. The law stated that one of the inspectors, whether appointed by the municipal council or the Lieutenant-Governor in Council, should be a woman.

A Bake Shops Act was passed in 1896 (c. 64) and factory inspectors were required to act as inspectors of bakeshops. The act authorized the appointment of additional inspectors, with power to enter and inspect bakeshops and to institute proceedings at law for its enforcement. This act and the act of 1892 were consolidated in 1897 (c. 51) in "An act respecting shops and places other than factories," which took several sections from the Factories Act and applied them to establishments for the manufacture of goods to which the Factories Act did not apply, places for the sale of goods and hand laundries. The Lieutenant-Governor was authorized to appoint male or female inspectors and to make regulations outlining the duties of the inspectors, who were given much the same powers of entry and examination as under the Factories Act. Inspectors under this act or the Factories Act had power to inspect bakeshops.

The Dominion Commissioner appointed to investigate the sweating system reported in 1895 to the government and

sections were added to the Shops Regulation Act in 1900 (c. 43) as to clothing manufacturers, providing that a register should be kept of the names and addresses of all persons to whom work or material was given out; articles made or altered should have a label attached giving the register number; any article made in a dwelling or tenement house could not be sold without a permit from the inspector stating that the place of manufacture was in good sanitary condition; the permit was to state the maximum number of persons allowed to be employed upon the premises and was not to be granted until an inspection of the premises had been made.

The provisions for the inspection of shops remained unchanged until 1913 (c. 60) when the legislation with regard to shops, bakeshops, factories and office buildings was consolidated. Subsequent legislation is treated in the section on factories.

### *Manitoba*

Legislation in Manitoba for the regulation of the hours of closing and the labor of young persons in retail establishments, which began with the Shops' Regulation Act of 1888 (c. 32), included no provision for inspection until the law of 1916 (c. 100), which vested powers of inspection in the inspectors of the Bureau of Labor. In this act the definition of shop was extended to include "wholesale or retail store, booth, stall or warehouse" and in 1917 (c. 84) the scope was extended to offices and premises used in connection with messenger service.

The Bake Shops Act of Manitoba, passed in 1898 (c. 2), provided that inspection of bakeshops should be carried on by inspectors appointed by the municipalities. Prosecutions under the act could be brought only by an inspector. In 1916 (c. 5) the definition of inspector was enlarged to include inspectors of the Bureau of Labor as well as inspectors

appointed by the municipalities. The same amendment gave to inspectors the powers given them in the Factories Act.

Workshops included in a schedule to the Factories Act of 1900 (c. 13) were made subject to inspection under that law.[1]

### *Quebec*

Legislation was passed in Quebec in 1900 (c. 22) on Safety in Public Buildings, adding "shops and stores of all sizes" to the definition of public buildings. The enforcement of the regulations as to the "safety, health and morality of the employees" was vested in the inspectors appointed under the factory act, who were given the same powers and were subject to the same obligations as for industrial establishments. In 1908 (c. 52) the definition was changed to include only "stores employing at least ten clerks." These provisions appear in the revision of 1925 (c. 176) in the Public Building Safety Act.

Inspection of workshops was practically excluded from the Factories Act as first enacted in 1885 (c. 32) since the law did not apply to workshops in which less than twenty persons were employed. In 1888 (c. 49) however the act was amended to apply to all workshops.[2]

### *British Columbia*

In 1900 (c. 34) British Columbia passed a Shops Regulation Act, which applied to "any retail or wholesale shop, store, booth, stall or warehouse in which assistants are employed for hire." This law placed restrictions on the employment of young persons in shops but no provision was made for inspection. An amending law of 1901 (c. 49) added special provisions as to bakeshops, provided for in-

[1] *Cf. supra*, p. 439.

[2] *Cf. supra*, p. 436.

spection of bakeshops and for the enforcement of the act by the superintendent of police. It was stated that the Shops Regulation Act should apply to the cities of Vancouver and New Westminister, the councils of those cities having the powers given to municipal councils by the act. In 1908 (c. 44) enforcement of the act by the superintendent of police was restricted to portions of the province not in any municipality. No adequate provision for inspection was made until 1912 (c. 40) when the following clause was inserted —" ' Inspector ' means in municipalities the person appointed by its municipal council to discharge the duties of inspector under the provisions of this act and in unorganized districts it means the inspector of factories." The inspector rather than the superintendent of police was charged with inspection of bakeshops.

Inspection of most workshops was provided for in the Factories Act of 1908 (c. 15), which applied to workshops of the description mentioned in a schedule in which five or more persons were employed. The list included coopers', furriers' and lithographers' workshops, and machine shops and dressmaking establishments.[1]

*Nova Scotia*

Legislation was enacted in Nova Scotia in 1895 (c. 17) as to hours in shops for young persons but no provision was made for inspection in that act or in subsequent amendments.

The Factories Act of 1901 (c. 1) included workshops where mechanical power was used within its scope and provided for their inspection.[2]

[1] *Cf. supra*, p. 443.

[2] *Cf. supra*, p. 441.

*New Brunswick*

The province of New Brunswick passed a law for the early closing of retail stores in 1911 (c. 15) but the law made no provision for inspection.

The Factories Act of 1905 (c. 7) provided in some measure for the inspection of workshops under the act by defining factory as "any building, office, or place in which ten or more persons are employed directly or indirectly in any handicraft or in preparing or manufacturing goods for trade or sale" and by including all bakeshops within the definition.[1]

*Saskatchewan*

The Factories Act of Saskatchewan of 1909 (c. 10) included workshops within its provisions but applied only to those employing more than five persons. In its present form the act covers factories and workshops with more than three employees and provides for their inspection.[2] The laws as to homes in stores contain no regulations on inspection.

*Alberta*

There was no provincial regulation of workshops in Alberta before the Factories Act of 1917 (c. 20). This act applied to retail stores, workshops and bakeshops as well as factories and offices. Provision was made for inspection.[3]

BUILDING CONSTRUCTION

*Manitoba*

In 1897 (c. 20, s. 21) the province of Manitoba amended its Municipal Act by inserting a paragraph which gave councils of cities, towns and villages authority to pass by-laws providing "for inspecting and regulating the construction

[1] *Cf. supra*, p. 442.

[2] *Cf. supra*, p. 445.

[3] *Cf. supra*, p. 446.

and erection of hoists, scaffoldings and other constructions used in the erecting, repairing, altering or improving of buildings, chimneys or other structures and for making all necessary regulations for the protection and safety of workmen . . . . , and for appointing inspectors of scaffolding. . . ."

The Building Trades Protection Act of Manitoba, passed in 1912 (c. 8), followed the general lines of the Ontario law of the previous year but the regulations were more stringent and in greater detail, with special provisions for cities and towns and the Lieutenant-Governor in Council could appoint inspectors for territory without municipal organization. Sections were added in 1913 (c. 4), requiring employers to give written notice to the inspector in the event of injury to a workman by accident. The scope of the act was enlarged in 1913-14 (c. 12) to apply to buildings under reconstruction or demolition. Inspection under the law was vested in 1916 (c. 12) in the inspectors of the provincial Bureau of Labor and inspectors appointed by municipalities. An amendment of 1917 (c. 8) empowered the Lieutenant-Governor in Council to adopt regulations from time to time for the protection of workers employed on any building or excavation and authorized the Minister of Public Works to appoint a board, with an official of the Department of Public Works as chairman, to draft such regulations.

*Quebec*

In 1908 (c. 53) the Quebec Legislature passed "An act respecting the inspection of scaffoldings" which conferred upon the councils of cities and towns power to appoint inspectors of scaffolding. The law stipulated that every contractor or builder using scaffolding fifteen or more feet high should obtain and exhibit, when required by any workman in his employ or an inspector, a certificate of inspection

signed by a municipal inspector, an architect, a licensed engineer or an inspector of public buildings of the province. The building inspectors were given authority by this measure to inspect scaffolding, to condemn such as they might think dangerous and to prosecute offenders under the law.

A law of 1921 (c. 76) made it obligatory upon municipalities within which a "public edifice" as defined was being built or altered, to appoint inspectors of scaffoldings and required contractors to obtain certificates of inspection signed by such an inspector and countersigned by the secretary of the municipality. It was provided that forms of standard scaffoldings approved by the Lieutenant-Governor in Council should be distributed to municipalities by the Department of Labor and that certificates should be granted only for scaffoldings conforming to the standards. The secretary of the municipality was authorized to cancel the inspection certificate on report of the inspector that the forms were not being complied with.

*Ontario*

A Building Trades Protection Act became law in Ontario in 1911 (c. 71). This measure required that in the erection, alteration, repair, improvement or demolition of any building, "no scaffolding, hoists, stays, ladders, flooring or other mechanical and temporary contrivances shall be used which are unsafe, unsuitable or improper, or which are not so constructed, protected, placed and operated as to afford reasonable safety from accident to persons employed or engaged upon the building." A number of provisions indicating in detail the precautions to be taken for the safety of building workmen were inserted in the act. Municipal councils were required to appoint by by-law a sufficient number of competent inspectors to enforce the statute and the Lieutenant-Governor in Council was em-

powered to appoint inspectors in territory without municipal organization. These provisions did not apply to any building one or two stories in height, nor to any farm building nor to work being done by the owner or occupant in person.

*Saskatchewan*

The Saskatchewan Building Trades Protection Act, which became law in 1912 (c. 18), was also patterned after the Ontario act, the differences being in the main those adopted in the Manitoba law of the same year. Authority for the appointment of inspectors was conferred upon the Lieutenant-Governor in Council and municipal councils were required to appoint inspectors. In case of any violation of the law inspectors were authorized by an amendment of 1912-13 (c. 46) to give a written order and stipulate that work on that part of the building or excavation should be suspended until the order should be carried out. Further regulations were added by an amendment of 1913 (c. 63).

*Alberta*

The Building Trades Protection Act of Alberta, passed at the first session of the legislature in 1913 (c. 14), departed but little in form and content from the Saskatchewan law and no changes have been made.

*British Columbia*

The province of British Columbia in 1913 (c. 47) inserted a clause in its Municipal Act empowering municipalities to pass by-laws regulating scaffolding and in 1914 the report of the British Columbia Royal Commission on Labor recommended that all cities over 10,000 population should be obliged by statute to appoint scaffolding inspectors [1] but no action has been taken on this recommendation.

[1] *Labour Gazette*, vol. xiv, p. 1191.

SHIPPING

The first provision for any measure of inspection of shipping in Canada was the Merchant Shipping Act, passed by the British Parliament in 1854 (c. 104). This law applied to the Dominions but permitted them to repeal any of the provisions with respect to vessels in their registry, by act of Parliament confirmed by the Imperial Government.

The act conferred upon the Board of Trade authority to appoint inspectors with full power to investigate and report, among other matters, upon the nature and causes of any accident or damage sustained by a ship and whether the hull and machinery of any steamship were sufficient and in good condition. The act also provided that if three or more members of a crew should complain to any officer of a ship or any shipping master with regard to the provisions or water, the officer or shipping master might investigate and if the complaint were justified he could so certify in writing to the master of the ship. If then proper food and water were not provided the master was to be fined not more than 20 pounds. If the complaint were found to be frivolous each complainant was to forfeit one week's wages.

In 1873 (c. 56) the Canadian Parliament passed "An act respecting deck loads" which brought some protection to seamen by regulating the lading of vessels and requiring customs officers to ascertain before a ship cleared that it was not loaded contrary to the act. The law did not apply to vessels sailing from British Columbia. As amended at various times it has become part of the Canada Shipping Act.

In the same year (c. 128) "An act relating to shipping and for the registration, inspection and classification thereof" gave further protection. Under this law if complaint were made to the Minister of Marine and Fisheries that any ship registered in Canada were unfit to proceed to sea or on any inland voyage because of defective hull or equipment or

by reason of being overloaded or improperly loaded, the Minister could cause the vessel to be surveyed by a person appointed by him, first, if he wished, requiring the complainant to make a deposit to defray the expenses of the survey. The Minister could declare any such ship unseaworthy and any principal customs officer could then detain the vessel. The Governor in Council was authorized to make rules and regulations for inspection and classification of vessels and to appoint officers to carry out this part of the act. These inspection provisions are now contained in the Canada Shipping Act.

The Seamen's Act, passed in 1873 (c. 129), reenacted the sections of the British Merchant Shipping Act which authorized inspection of provisions and water on complaint of three or more of the crew. This act also required a certain space for each seaman to be properly constructed and kept clear. Every such space was to be inspected at the time of the registration or reregistration of the ship by one of the surveyors appointed by the Governor in Council under the Colonial Shipping Act of 1868. If the accommodations were as required the officer was to give a certificate to the collector of customs and the space was to be deducted from the registration of tonnage, but first the number of men the space was constructed to accommodate had to be indicated by cutting or painting on a beam or over the hatchway. On complaint the surveyor could inspect and report to the collector of customs and if the accommodations were not as required the registered tonnage could be altered and the deduction of space for accommodation of the crew disallowed until the provisions were complied with. The law applied to Quebec, Nova Scotia, New Brunswick and British Columbia, and these provisions are still in force as part of the Canada Shipping Act. It repealed any sections of the Imperial Merchant Shipping Act inconsistent with it.

In 1875 (c. 29) some provisions of the Seamen's Act of 1873 were extended to vessels on the inland waters but no inspection regulations were included.

In 1887 the Trades and Labor Congress asked that a law should be passed requiring vessels on inland waters to carry competent crews, providing for inspection of hulls and rigging and preventing the loading of vessels below a mark designated by the inspector.[1]

The Royal Commission on the Relations of Labor and Capital, reporting in 1889, said: "At the present time (except for insurance purposes) there appears to be no proper inspection of sailing vessels . . . and it is stated in evidence that a very large number of craft now trading on the lakes are, for this reason, little better than floating coffins." [2] The Commission earnestly recommended that the State provide by legislation for "proper inspection of all vessels on the lakes and rivers of Canada; and further, that such vessels be not permitted to leave port unless found seaworthy, sufficiently manned with competent sailors, provided with life-saving appliances, furnished with suitable accommodation and necessary supplies for all on board, and not overloaded." [3]

Action was taken in this direction at the session of 1891 (c. 37) when an Inspection of Ships Act was passed. The act applied to every description of vessel used in navigation not propelled by oars or wholly or partly by steam and registered in Canada. The Governor in Council was empowered to appoint port wardens, harbour masters, inspectors of hulls and equipment of steamboats or officers of the Marine Department to inspect the hulls and equipment of

[1] *Trades and Labor Congress*, 1887, p. 17; 1888, p. 18; 1889, p. 20.

[2] *Report of the Royal Commission on the Relations of Labor and Capital in Canada*, p. 108.

[3] *Ibid.*, p. 9.

vessels. Authority was also given to make rules for inspection of ships to ascertain their seaworthiness, the inspection to comprise the hull, masts, spars, sails, rigging, anchors, cables, chains, boats and other parts of the equipment. It was required that injury to a ship should be reported to the inspector and full powers of examination were granted and penalties for obstruction imposed. Inspectors were given authority to visit any ship, even if not registered in Canada, to inspect the loading apparatus and if it was found defective so as to be dangerous, to report to the Minister who could thereupon order that such apparatus should not be used until he should grant permission under pain of forfeiture and the payment of a fine.[1] On receipt of a written report from an inspector that a ship was so unseaworthy as to endanger life or property, the Minister could order the vessel detained and could instruct the chief officer of customs not to grant clearance until permitted by the Minister.

The Trades and Labor Congress was not satisfied with the law or its administration. Many requests were lodged with the government for the appointment of inspectors of gear and tackle and for amendments to the statute [2] but its provisions remain as part of the Canada Shipping Act.

"An act to provide for marking of deck and load lines" was also passed in the session of 1891 (c. 40). The Commission on the Relations of Capital and Labor had drawn attention to the practice of overloading and stated that the sailors who gave evidence before the Commission were a unit in expressing a desire for the Dominion Government to pass "a law regulating the loading of vessels, making it compulsory

[1] Ships belonging to Her Majesty were excluded from this provision by 1894, c. 45.

[2] *Trades and Labor Congress*, 1891, p. 25; 1892, pp. 6, 16; 1897, pp. 9, 15; 1914, p. 98; 1915, p. 88.

that every vessel, when her cargo is on board, shall have sufficient free-board to enable her to weather any storm she might encounter when making a trip with tolerable safety." [1] They suggested that a mark be placed on the side of the vessels in such a position as would ensure a free-board of from two to three and one-half inches for each foot of depth of draft when loaded, and they believed if this were done that the loss of life and property would be very greatly diminished. The law of 1891 applied to ships navigating salt water or the St. Lawrence below Quebec but not to vessels belonging to Her Majesty the Queen, to those registered elsewhere than in Canada or to ships under 150 tons registered in Canada. It required every ship subject to the act to be marked on each side amidships to indicate the maximum load line in salt water to which the vessel could be lawfully loaded. This requirement is now included in the Canada Shipping Act.

Since the revision of the Dominion statutes in 1906 there have been two amendments affecting these foregoing sections — one of 1908 (c. 65) replacing the section of the Canada Shipping Act as to deck loads in winter with more detailed provisions and the other of 1923 (c. 35) empowering the Governor in Council to make regulations as to the loading of grain cargoes.

### CONSTRUCTION WORKS, LUMBER AND MINING CAMPS

#### *Canada*

The Dominion Government was the first authority to establish inspection of public works with a view to the health and comfort of the employees. The Public Works Health Act of 1899 (c. 30) authorized the Governor-General in Council to make regulations to this end which should apply

[1] *Commission on Relations of Labor and Capital*, p. 109.

to public works, railways, canals, bridges, telegraphs or other works within the legislative authority of the Dominion Parliament. The Governor-General in Council was empowered to regulate the extent and character of the quarters for the employees, to determine the number of medical men to be employed, to establish regulations as to the provision of hospital facilities and to provide for the inspection of the houses, tents or other living quarters. The administration of this statute was vested in the Dominion Department of Health when that department was established in 1919 (c. 24).

In 1904 the Trades and Labor Congress had stressed the necessity for better protection of the workers in this regard [1] and a resolution passed by the Congress in 1912 characterized the Dominion Government's provisions for the inspection of living conditions in construction camps as "wholly inadequate and practically useless." [2]

### *Ontario*

The province of Ontario in 1901 (c. 34) passed "An act respecting sanitary regulations in unorganized territories," which authorized the provincial Board of Health, with the approval of the Lieutenant-Governor in Council, to make regulations "for the cleansing, regulating and inspection of lumbering camps and mining camps and railway construction works, and of other places where labour is employed." The exercise of this authority was limited to territory without municipal organization. The legislature also conferred upon the Board of Health power to appoint sanitary inspectors to enforce its regulations. According to an amendment of 1920 (c. 81) the regulations might provide penalties for violation of any requirement. This legislation remains as part of the Public Health Act of Ontario.

[1] *Trades and Labor Congress*, 1904, pp. 17, 54.

[2] *Ibid.*, 1912, p. 109.

*Quebec*

In 1901 (c. 19) the Quebec Legislature authorized the Lieutenant-Governor in Council to appoint health officers on application of the provincial Board of Health for territory without municipal organization. Officers so appointed were to be under the direction of the provincial Board of Health, which was to define their powers and duties. An amendment to the Public Health Act passed in 1915 (c. 59) empowered the Board of Health, with the approval of the Lieutenant-Governor in Council, to require the proprietors or contractors in charge of shanties, mining camps, railway construction camps and other such establishments with 25 or more men in the one place to employ qualified physicians. In April, 1924, a number of by-laws were issued under the Public Health Act of 1922 dealing with health requirements for lumber and pulpwood camps, railway construction camps, mining camps, lumber saw mills and pulp mills and brick manufactories.

*Saskatchewan*

The Public Health Act of Saskatchewan contains a provision, passed in 1909 (c. 8, s. 10), which confers upon the Commissioner of Public Health power to make regulations for " the sanitary control of lumbering, mining, construction, threshing and other camps."

*British Columbia*

The Province of British Columbia passed in 1911 (c. 20) "An act respecting health regulations for lumber camps, railway camps, mining camps, sawmills and other places in which labour is employed." This law, which was to be read as part of the Public Health Act, conferred upon the provincial Board of Health power to make regulations governing the sanitation, hospital services, and housing accommodation in

such places and providing for their inspection from a health standpoint. The Board could also require the employment of physicians by the employers. The British Columbia Royal Commission on Labor, in 1914, recommended, reporting government regulation of the construction and maintenance of camps.[1]

*Manitoba*

In the Public Health Act of Manitoba in 1911 (c. 44) the provincial Board of Health was given power to make rules and regulations as to "the sanitary condition of lumbering, woodworking, construction, threshing and other camps." Health regulations for camps were issued in September, 1925.

*New Brunswick*

The Public Health Act of New Brunswick, passed in 1918 (c. 36), authorized the Minister of Health to make regulations, with the approval of the Lieutenant-Governor in Council, "for the cleansing, regulating, inspection and the sanitary requirements of lumbering, mining, railway construction and other camps, works or places where labour is employed."

*Nova Scotia*

An amendment to the Nova Scotia Public Health Act in 1919 (c. 72) provided that no one should conduct a camp for his employees without written permit from the district health officer.

ELECTRICAL CONSTRUCTION

*British Columbia*

The Electrical Energy Inspection Act of British Columbia, passed in 1910 (c. 16), gave the Lieutenant-Governor in Council power to appoint an officer to inspect electrical plant

[1] *Report of the Royal Commission on Labour, op. cit.*, p. 9.

and equipment and to require all necessary information. If the inspector discovered any condition "dangerous to life or limb" he could notify the owner to remedy the defect within a specified time and he was also directed to report the matter to the Lieutenant-Governor in Council, who could confirm, modify or disallow the order. Neglect to comply with any such order within one week after notice of the action was made punishable by fine.

In 1914 the British Columbia Royal Commission on Labor made recommendation for the appointment of an assistant electrical inspector, as well as the promulgation of regulations respecting the placing on poles of wires of different voltage.[1] The British Columbia Federation of Labor asked in 1915 for the enactment of "a law covering the inspection of all construction and installation of all electrical work, power stations, pole lines. . . ."[2]

A new act was passed in 1922 (c. 23) providing for a chief inspector and such number of inspectors as might be necessary. The chief inspector was to examine plans and specifications of electrical equipment and if he discovered anything "in his opinion dangerous to person or property" he was immediately to notify the person who submitted the plans and specifications, pointing out the defects. Powers of inspection were granted and obstruction of the inspector forbidden. The inspector was authorized to require alterations in any electrical equipment "dangerous to person or property." Penalties were imposed for violations of inspectors' orders. Provision for an appeal from such orders was made and the decision of the Lieutenant-Governor was to be final. In 1924 (c. 16) the administration of this act was vested in the Workmen's Compensation Board.

[1] *Report of the Royal Commission on Labour, op. cit.*, p. 11.

[2] *Trades and Labor Congress*, 1915, p. 41.

### *Ontario*

By a law of 1912 (c. 14) the Ontario Legislature amended the Power Commission Act to authorize the Hydro Electric Commission to order the installation, removal or alteration of electrical works or equipment for the safety of the public and the employees. In 1915 (c. 19) the Commission was empowered to order any work to be done in connection with electrical works as might be necessary for the safety of the public or of workmen and to appoint inspectors for the enforcement of its orders and regulations. It was provided in 1918 (c. 14, s. 15) that the provisions of the act should not apply to any mine as defined by the Ontario Mining Act.

### *Saskatchewan*

Saskatchewan passed in 1913 (c. 29) "An act to provide for the safety of electrical workers." This measure conferred upon the Lieutenant-Governor in Council authority to make regulations for the safety of workmen with respect to the construction, maintenance and use of electric wires, wiring apparatus, poles and fixtures. This act appears in the revision of 1920 (c. 188) as the Electrical Workers' Protection Act.

### *Alberta*

Alberta passed an Electrical Workers' Protection Act in 1917 (c. 7) which prescribed detailed regulations for the construction and use of electrical wires, cables, poles and fixtures. This statute was replaced by the Electrical Protection Act of 1919 (c. 27), which conferred upon the Workmen's Compensation Board authority to make such regulations for the safety and protection of electrical workers as it might consider necessary. The Board was also empowered to appoint inspectors to enforce the act.

*Manitoba*

The Manitoba Electrical Power Transmission Act was amended in 1921 (c. 21) to permit the Power Commission to require such work to be done "as may be deemed necessary for the safety of the public or of workmen" and in case of non-compliance to cause the supply of electric power to be cut off.

*Nova Scotia*

The Inside Electrical Installation Act passed in Nova Scotia in 1923 (c. 7) empowered the Fire Prevention Board to make "rules and regulations concerning electrical installations with a view to the prevention of fire and injury to persons and property." The act did not apply to the cities of Halifax and Sydney. It was to come into effect on proclamation and this has not been ordered.

EXPLOSIVES

The Dominion Government in 1914 (c. 31) passed an Explosives Act to regulate the manufacture, testing, storage and importation of explosives. This law authorized the Governor in Council to appoint inspectors of explosives in the Department of Mines to examine premises where explosives were being manufactured or stored. The Minister of Mines was authorized to direct an enquiry to be made whenever any accidental explosion of any explosive had occurred or when any accident had been caused by an explosive. The Governor in Council was also authorized to make regulations "for the safety of the public and employees at any factory or magazine, or any person engaged in the handling or packing of explosives, or the transportation of explosives otherwise than by railway." Penalties were provided for obstruction of an inspector.

The Dominion and each of the provinces except Prince Edward Island have regulated the transportation of ex-

plosives on railways; the mining laws of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and the Yukon contain provisions governing the use of explosives; and Alberta, New Brunswick and Saskatchewan have inserted sections in their factory acts as to the storage of explosives in factories.

SUMMARY

Inspection of mines with a view to the safety of employees began in the coal-mining provinces. Nova Scotia passed the first Canadian legislation on the subject in 1864. British Columbia made provision for inspection of coal mines in 1877 and of metalliferous mines in 1897. In Ontario no adequate system of inspection seems to have been established until the Mining Operations Act of 1890. In the mines of the province of Quebec it was not until 1892 that orders might be made "respecting safety of the works in mines so as to protect the life and health of the workmen employed." In 1893 an ordinance of the Northwest Territories established the first inspection in the mines of the western prairie country and the provisions of this ordinance remain at the present as the mining law of Saskatchewan. Manitoba, in a Mines Act of 1897, authorized a system of inspection in that province but no inspectors have been appointed. In 1901 the Yukon Territory provided for inspection in its Miners' Protection Ordinance and with the development of the coal fields of Alberta a law for the regulation and inspection of mines was enacted in 1906. In all, the provinces have 36 mines inspectors.

Inspection of factories came in Ontario and Quebec with the industrial activity of the eighties. It was extended to the other provinces, except Prince Edward Island, in the boom period which started at the beginning of the century —Manitoba (1900), Nova Scotia (1901), New Brunswick (1905), British Columbia (1908), Saskatchewan (1909)

and Alberta (1917). The Ontario law was not proclaimed in force until two years after its enactment and there were long delays in the appointment of inspectors in Quebec, Nova Scotia and Manitoba. Several union resolutions urged the necessity for more adequate inspection in Ontario and Quebec and a decade and a half later it was necessary to bring the same pressure upon the governments of Manitoba and Nova Scotia. The provinces now have 62 inspectors, of whom fourteen are women.

The mines and factory acts accord to inspectors adequate powers of examination and enquiry and provide against obstruction and refusal to furnish necessary information. Inspectors are required to submit reports regularly. Mine inspection seems to have been much more effective than factory inspection. There have been some complaints of poor enforcement of the laws from the miners' organizations but they are decidedly few as compared with the demands for better inspection of factories. Indeed, in British Columbia in 1911, the unions gave credit to the provincial government for the enactment of "coal-mine regulation for the protection of life that will bear comparison with the best in operation in any part of the world," [1] and as early as 1896 the Provincial Workmen's Association referred to the Nova Scotia legislation in much the same terms.[2] In contrast, several of the provinces were slow to enforce their factory legislation after its enactment and from the outset organized labor has been urging the appointment of more inspectors and stricter enforcement of the regulations.

Inspection of factories is more general in Canada than in the United States. While great industrial states have extensive inspection services, only about half the states have factory inspectors and in general they are not well trained

[1] *Cf. supra*, p. 421.

[2] *Cf. supra*, p. 88.

and are poorly paid.[1] While the factory inspection in Canadian provinces is in some degree open to the same criticisms there is less political interference and greater continuity of service. On the other hand, factory inspection in Canada falls far below the standards established in Great Britain..

Ontario alone among the provinces enacted a special law for the regulation and inspection of workshops. This measure, passed in 1892, was consolidated with the Factories Act in 1913. In other provinces the regulation of workshops and supervision by the factory inspectors was effected under the factories acts. The Shops Regulation Acts, enacted in Manitoba (1888), Ontario (1892) and British Columbia (1900) for the regulation of hours of closing and the labor of young persons in retail establishments, included provision for inspection but for many years no proper inspection was established. Quebec in 1900 gave the factory inspectors powers of inspection over all shops and stores but in 1908 inspection was limited to stores employing at least ten clerks. Nova Scotia enacted legislation for the regulation of shops in 1895 but no provision for inspection was made.

Inspection of bakeshops by the factory inspectors was established in Ontario by the Bake Shops Act of 1896. Manitoba vested the inspection of bakeshops in municipal inspectors (1898) and British Columbia in the department of police (1901). New Brunswick established inspection of bakeries by the Factories Act (1905) and Alberta by the Factories Act of 1917.

The Building Trades Protection Acts of Quebec (1908), Ontario (1911), Manitoba (1912), Saskatchewan (1912) and Alberta (1913) authorized the appointment of inspectors to enforce regulations for the protection of workers employed in building construction.

[1] J. B. Andrews, *Labor Problems and Labor Legislation* (2nd ed., New York, 1922), p. 127.

The Merchant Shipping Act of Great Britain, passed in 1854, applied as well to the British Dominions. This law authorized some inspection of ships and investigation of seamen's complaints with regard to water and provisions and from this beginning a number of Canadian regulations developed, inconsistent provisions of the Imperial act being repealed from time to time. Laws of 1873 regulated the lading of ships, authorized investigation of vessels complained of as unfit to proceed to sea, reenacted provisions of the British Merchant Shipping Act authorizing inspection of water and provisions, and required that accommodations for the crew should be inspected. At the session of 1891 laws were passed which established a system of inspection for all vessels registered in Canada and required the marking of load lines on vessels navigating salt water. All these provisions as amended from time to time were consolidated in the Canada Shipping Act.

The employment of numbers of men on railroad and other construction works, in lumber and mining camps, in sawmills and in the threshing camps of the wheat-growing provinces has necessitated legal regulation of the living and working conditions in such places, especially those located in isolated districts without municipal government.

In 1899 Parliament authorized the Governor-General in Council to provide for the inspection of the living quarters of employees on construction works and in lumber and mining camps within Dominion jurisdiction and provincial legislation has followed in Ontario (1901), Quebec (1901), Saskatchewan (1909), British Columbia (1911), Manitoba (1911), New Brunswick (1918) and Nova Scotia (1919).

Legislation looking to the enforcement of regulations for the protection of electrical workers has been enacted in British Columbia (1910), Ontario (1912), Saskatchewan (1913), Alberta (1917) and Manitoba (1921). A Domin-

ion law authorizing the appointment of inspectors of explosives was passed in 1914.

As to the measure of conformity with the recommendation of the International Labor Organization, the sphere of factory inspection and the functions and powers of inspectors in Canada conform in general. The inspectors are not burdened with additional duties and they are given ample powers to secure admission to factories, to question members of the staff in privacy and to examine registers and documents. They may order necessary alterations to plant within a fixed time and suspension of the execution of such orders may be had only on appeal to a higher authority. There is a definite trend in the legislation towards greater emphasis on the prevention of accidents and the better safeguarding of the health of the workers. Accidents that necessitate the absence of the worker from his place for a few days must be notified to the inspector.

Many of the suggestions of the recommendation deal with matters which in Canada are entirely within the sphere of administration and their status is not revealed by the legislation. The organization of inspection on a district plan, for example, is a matter of administrative arrangement, feasible only in the larger industrial provinces with a considerable staff of inspectors. Most of the inspectorates include women as well as men, as the recommendation requires, and they are independent of changes of government; but the scale of salaries does not attract and retain persons with a high standard of technical training and experience, as recommended. Annual reports are published but they lack uniformity in method and do not permit of accurate comparison as between the provinces and frequently as between years in the same province.

No special health services have been established for the workers but some provision for their welfare is made under the Dominion and provincial health acts.[1]

[1] *Cf. supra*, pp. 41, 460-63.

# CHAPTER XIII

## Conclusion

"There can be no equality of opportunity, the first essential in the body of politics, if men and women and children be not shielded in their lives, their very vitality, from the consequences of great industrial and social processes which they cannot alter, control or singly cope with." (From inaugural address of Woodrow Wilson, Washington, March 4, 1913.)

We may now review Canada's position on the nine methods and principles of the Labor Section. The first, that labor should not be regarded merely as a commodity, has received important recognition in the exclusion of trade unions from the operation of the combination laws. On the second, freedom of association for employers and employed, employers' associations have been little used for purposes of industrial relations in Canada. There has been no interpretation of the principle by convention or recommendation but as compared with British standards Canadian workers have a very restricted right of association. Trade unions are open to charges of criminal and civil conspiracy and their funds are liable to seizure to satisfy damage actions. While the law grants the right to strike for certain stated objects, sympathetic strikes have been held illegal. Canadian unions do not enjoy the protection with regard to picketing and injunctions granted under the law of Great Britain but are more nearly in the precarious position of the unions of the United States.

The Canadian legislation bearing on the third point, the payment of a wage adequate to maintain a reasonable stand-

ard of life, is found in the provincial minimum-wage laws and the provisions for the payment of fair wages on contracts of the Dominion Government and of several of the provinces. Excellent progress has been made in minimum-wage legislation for women and children and British Columbia has recently passed the first minimum-wage law for male workers.

Canada has enacted but little legislation on the eight-hour-day principle. The more important mining provinces have granted the legal eight-hour day to mine workers and British Columbia has enacted a general eight-hour-day law which permits exemptions. There has been some limitation of the hours of adult male workers in factories and shops in Alberta; of employees in bakeshops in British Columbia, Manitoba and Ontario; of street-railway employees in Nova Scotia and Ontario; and of hotel employees, firemen and chauffeurs in some provinces, but apart from the fixing of an eight-hour work-period on night shift in Alberta factories, these laws do not reduce the work-day to eight hours. All the provinces but Prince Edward Island permit municipalities on petition of the shopkeepers affected to pass by-laws providing for the early closing of shops. A considerable proportion of the industrial workers have the eight-hour day by agreement with employers and the ground to be gained on this principle is not so great as appears at first.

As to the weekly-rest principle, the Dominion Lord's Day Act of 1906 guarantees 24 consecutive hours' rest in each week but the exceptions permitted as "works of necessity and mercy" are numerous. Prosecutions under this law may be undertaken only with the consent of the attorney-general of the province concerned and several provinces have laws on Sunday observance which were not superseded by the Dominion act. Ontario has limited the weekly work-period of street-railway employees to six days of ten hours

each and other provinces have restrictions on the weekly hours of these workers. A weekly rest of 24 hours has been granted by law to employees of fire departments in Alberta, British Columbia and Ontario; to hotel and restaurant employees in Ontario and Quebec; to workers in bakeshops in British Columbia and Ontario; and to barber-shop employees in Ontario. A British Columbia law of 1916 compelled municipalities to establish a weekly half-holiday for employees in shops and permissive legislation on this subject has been passed by several of the provinces.

There has been much legislation on the child-labor principle. All the mining laws except that of New Brunswick conform to the convention fixing fourteen years as the minimum age of admission to employment, but British Columbia and Nova Scotia permit children over twelve years to work in metal mines. Certain provinces—Ontario, Quebec (underground), Nova Scotia (coal mines), British Columbia (underground in coal mines) and Alberta (underground)—have fixed a minimum age higher than the convention requirement. Every province except Prince Edward Island has legislation regulating child labor in factories, amusement places and street trades and Ontario, Manitoba, Nova Scotia, British Columbia and Alberta have regulated employment of children in retail establishments. As required by the convention all the provinces except New Brunswick and Prince Edward Island prohibit employment of children under fourteen years in factories. In Alberta and British Columbia the minimum age is fifteen. In pursuance of the conventions on the subject the Dominion Parliament in 1924 forbade employment of children under fourteen years on board vessels and employment of young persons between fourteen and eighteen as trimmers and stokers. Compulsory school attendance is not yet general. Quebec has no compulsory attendance law but forbids employment of illiterate children

under sixteen years in any industrial or commercial undertaking. The school attendance laws of Prince Edward Island, Nova Scotia and New Brunswick fall short of those of the other provinces. In some provincial laws the school-leaving age is higher than the international standard.

The seventh principle, the payment of equal wages to men and women for work of equal value, has received no legal recognition.

On the subject of equitable economic treatment for the alien worker in labor legislation, British Columbia has sought by various measures, many of which have been disallowed or declared *ultra vires,* to exclude Oriental workers from employment on public works and public utilities and in mines. Every provincial workmen's compensation law but that of Saskatchewan grants less benefit to non-resident dependents of injured workmen than to resident dependents. Some of the provinces have attempted to prohibit employment of white women by Orientals, especially in laundries and restaurants, but this legislation has either been held in abeyance or given way to discriminatory treatment in the granting of licenses.

As to the establishment of a system of inspection in which women should take part, all the provinces but Manitoba, New Brunswick and Prince Edward Island have mines inspectors, and factory inspectors have been appointed in every province except Prince Edward Island. Each of the provinces with factory inspection, except New Brunswick and Nova Scotia, has at least one woman inspector. Inspection of workshops is now provided for under the factory acts. Several of the provinces have regulated employment conditions in retail stores but they have been tardy in enforcement. Alberta, British Columbia, Manitoba, New Brunswick and Ontario have inspection of bakeshops and Alberta, Manitoba, Ontario, Quebec and Saskatchewan have legal

provision for the enforcement of laws to protect workers in building construction. Inspection in the interests of workers employed on board vessels has been established by the Dominion Government under the Canada Shipping Act. The Dominion and several of the provinces have inspection of construction works and lumber and mining camps in their jurisdictions, and Alberta, British Columbia, Ontario and Saskatchewan have legal provision for the enforcement of regulations to protect electrical workers.

With regard to legislation on the conventions and recommendations of the International Labor Conferences, of the 20 conventions adopted to the end of 1925, eight have been held to be within the federal sphere and in the Dominion Government's view legislation already in force has largely provided the necessary authority for meeting the requirements of four — the section on employment offices of the convention on unemployment, right of association for agricultural workers, a weekly rest-day in industrial establishments and facilities for finding employment for seamen. The Dominion has recently passed legislation which meets the proposals of the four remaining conventions within its jurisdiction — fixing the minimum age for employment at sea, providing unemployment indemnity in case of loss or foundering of a ship, establishing the minimum age for trimmers and stokers and medical examination for young persons employed on ships.

As to provincial action, Nova Scotia and Saskatchewan have passed resolutions endorsing the principles of four conventions — concerning employment of women during the night, minimum age of admission of children to industrial employment, right of association of agricultural workers and minimum age for admission of children to agricultural employment. British Columbia has enacted laws meeting in large measure the requirements of the conventions on the

eight-hour day and employment of women before and after childbirth, and Manitoba has passed legislation with respect to night employment of young persons in industry. British Columbia has also given a lead to other provinces on the conventions concerning night employment of women in industry and fixing the minimum age of employment in industry by enacting legislation which will come into force when similar laws have been passed by other provincial legislatures.

The Dominion has passed an order-in-council on one of the 25 recommendations, that concerning anthrax. Long before, the Federal Parliament enacted legislation on two others—a law of 1906 implementing the terms of the Berne Convention prohibiting the use of white phosphorus in the manufacture of matches and the Lord's Day Act of the same year which made some provision for a weekly rest-day in commercial and other establishments.

Saskatchewan and Nova Scotia have passed resolutions endorsing in whole or in part three recommendations—two sections of that on unemployment, four sections of that on prevention of unemployment in agriculture and the recommendation on development of technical agricultural education. Various provinces had previously passed legislation on eight recommendations—protection of women and children against lead poisoning, the section on abolition of private employment agencies of the recommendation on unemployment, establishment of health services, sections dealing with settlement, etc., of the recommendation on unemployment in agriculture, development of technical agricultural education, factory inspection, minimum scale in workmen's compensation and workmen's compensation for occupational diseases.

But in the matter of actual ratification Canada stands in the lower ranks despite her rating as one of the foremost agri-

cultural and the sixth industrial country in the League of Nations. While certain provinces have recognized some of the conventions in legislation, and indeed have surpassed them in some instances, no single province has taken action on all the proposals nor have all the provinces recognized any one. The Dominion Government has signified Canada's adherence to the conventions relating to the employment of children and young persons at sea but this action is of no great significance for Canada is not an important maritime state. None of the other proposals have been ratified. It is quite evident that there is no considerable body of well-informed public opinion on the subject of the various conventions and recommendations.

In any appraisal of Canada's record of labor legislation since she assumed her treaty obligations, the post-war industrial situation must be taken into account. In the five-year period 1921-25 employment attained the level registered in mid-winter, 1920, in only one month and the greater advances in Canada's labor legislation have been achieved in periods of industrial activity and full employment, such as the early seventies, the early eighties, the era of prosperity that marked the first dozen years of the century and the war period.

The division of powers between the Dominion and the provinces has also been an obstacle. While the Dominion's sphere in labor legislation is of no small importance because of its authority in navigation and shipping, naturalization and aliens, and the criminal law and while the British North America Act confers the residuary powers of legislation on the Dominion Parliament in contrast with the American and Australian constitutions which confer them on the states, the larger share of the field falls within the legislative competence of the provinces by virtue of their authority over property and civil rights.

The 1925 amendment to the Industrial Disputes Investi-

gation Act, which was quite evidently designed to cover every enterprise the Dominion could claim as within its jurisdiction, applied to employees and undertakings of the Dominion Government, to works and undertakings in connection with navigation and shipping, interprovincial lines of communication and transportation and lines extending beyond the limits of the province, international lines of steamships, interprovincial and international ferries, works and undertakings operated by aliens or declared by Parliament to be for the general advantage of Canada or for two or more of the provinces and the business of any company incorporated under federal authority.

Accordingly, most proposed labor laws become the concern of the nine provincial legislatures. While some may favor a given proposal, they hesitate to place their industries at a disadvantage by imposing restrictions that others refuse to accept. Delay is inevitable. This difference in standards as between the provinces constitutes essentially the same problem as that between nations, which the International Labor Organization is designed to overcome. Canada's obligations under the Treaty have prompted the Dominion Government to seek to clarify the jurisdictional difficulty, to call the provinces together in conference in order to map out the field and to promote a larger measure of uniformity. This constitutes a new phase in the history of Canadian labor law and the policy gives promise, if continued, of sufficiently justifying the Labor Section and the International Labor Organization in so far as Canada is concerned.

Canada's body of labor law is due mainly to the work of the Canadian Labor Union, the Knights of Labor, the Trades and Labor Congress of Canada, the Provincial Workmen's Association and the Railway Brotherhoods. The railway organizations, of course, have been chiefly interested in measures concerning railway employees and in cases

affecting them before the Railway Commission. The brunt of the burden has fallen on the Trades and Labor Congress. Junior organizations, such as the Canadian Federation of Labor and the Federation of Catholic Unions, have yet to win their spurs on this field. It is a story of a hope for better things, partially translated into legislation by the slow democratic process of discussion at local union meetings; presentation of resolutions at trades councils, provincial and national conventions; the work of legislative committees; lobbying of members of parliament and the legislatures; and annual delegations to the Dominion and provincial governments.

Labor has reaped its best harvest of legislation in the West where, except in British Columbia, industry is on a smaller scale and cannot offer the resistance encountered in the East and legislatures are more representative of agriculture than of industry. British Columbia is in the forefront with its enactments on workmen's compensation, the minimum wage, fair wages on government contracts, its mines and factory acts and an eight-hour-day law. Ontario led in modern workmen's compensation legislation but the minimum wage began in Manitoba and British Columbia. Alberta, Saskatchewan and Manitoba follow British Columbia fairly closely although none of these has a general eight-hour-day law and Saskatchewan has not attained the same standards in workmen's compensation as the other provinces. The four provinces of the West have led the East in the enactment of minimum wage laws and the suppression of private employment agencies.

First in workmen's compensation legislation, Ontario has attained high standards in this field, in minimum wage, in mines and other legislation. It was slow to enforce its Factories Act, passed in 1884, and to provide adequate factory inspection. Quebec was also tardy in this respect but Nova

Scotia was most delinquent. Quebec has usually been slow to respond and this has been especially noticeable with respect to workmen's compensation, the minimum wage and compulsory school attendance, and in enforcement as well as enactment. Generally, Nova Scotia and New Brunswick have followed Ontario's lead, but quite independently Nova Scotia established high standards in the protection of employees in mines in response to the urgings of the Provincial Workmen's Association. The small agricultural province of Prince Edward Island, with a population of less than one hundred thousand, has almost no labor legislation.

There has been but little effort to promote labor legislation by the election of labor candidates to Parliament and the legislatures and it has met with indifferent success. The Trades and Labor Congress has persistently declined to lead a labor party. In the nineties there was some agitation for the formation of a labor party in politics and in 1900 the Congress gave its approval to independent political action. In 1906 the Congress approved a policy of provincial autonomy in the establishment of labor political parties. The executive of the Congress proposed in 1917 that a labor party modelled on that of Great Britain should be organized and the Canadian Labor Party came into existence. Again in 1923 the Congress confirmed its policy of non-participation and endorsed the Canadian Labor Party. While Canadian Labor has been much influenced by British precedents, the organic connection with the American Federation of Labor seems to have made the non-participation policy of that body the dominant influence in this department. No doubt the difficulty of maintaining a united party in so large and sparsely settled a country, with such a diversity of sectional interests and so many opportunities that separate workers from their unions, has been a contributing factor.

Canadian trade unionism has shown more faith in legisla-

tion than the American movement, a difference that may be due to the larger influence of British traditions and to the greater probability of retaining legislation in force as compared with the United States, where the courts have declared so many labor laws unconstitutional.[1] Parliament has deprived Canadian Labor of some important legal gains and in the last quarter century the courts have restricted union action, in labor disputes by the granting of injunctions. However, the use of the injunction has not become general as in the United States and the Canadian courts have very little power to nullify legislation.

Canadian Labor's part in the development of labor legislation must be viewed in relation to the British origin of many of the leaders. Several of these men, and a considerable proportion of the rank and file, had been members of the British labor movement before emigrating to Canada and their desire to secure in this country on the threshold of its industrial history the laws enjoyed in the advanced industrialism of the United Kingdom has been one of the major forces in the growth of Canadian labor legislation.

In their effort to promote legislation the Canadian trade unions have had as their main objectives the improvement of working conditions and a better legal status for labor organizations. In regard to the first the unions have had assistance from other organizations. In the early eighties the Women's Literary Club of Toronto demanded better treatment for women employees in the local factories. The Lord's Day Alliance and the Trades and Labor Congress fought side by side in the first years of the century for Sunday-rest legislation, and the Social Council of Canada, the National Council of Women and other bodies have been interested in the enactment or enforcement of particular laws.

[1] *Cf.* John R. Commons and Associates, *History of Labour in the United States*, vol. ii, p. 529.

Occasionally public opinion has proved a strong ally. The humanitarian sentiment of the country was aroused when the Royal Commission on Industrial Relations revealed the deplorable conditions in some factories in the eighties. As Sir John Thompson said, "The public was greatly excited by the evidence" [1] and unproclaimed factory acts were brought into force and inspectors appointed and set at work. Again, the fear of mine disasters, factory fires, and accidents on ships, elevators and buildings has hastened the development of protective legislation.

It must be noted on the other hand that the labor movement's course through half a century has been paralleled by development of organization on the part of the manufacturers. They feared that industrial disputes and protective legislation might prove heavy burdens upon an infant industry. While in 1882 the *Canadian Manufacturer* was warning employers of the evils of industrialism and the inevitability of labor legislation it stated with regard to the proposed Dominion factories law: "It is simply preposterous under the circumstances to demand that we should at once take the field with a factory act all complete like Minerva springing fully armed from the brain of Jupiter." [2]

But the unions have been pertinacious in their pressure on Parliament and the legislatures. Their plan to "pluck at a gown o' gowd an' you may get a sleeve o't," as one of the Scottish officials of the Provincial Workmen's Association expressed it, shows a fair return after fifty years. On the whole, Canada's body of protective legislation, despite the longer industrial history of the United States, is appreciably in advance of that country both as to the standards established and the proportion of the country affected. Generally the precedents have been British but even where, as in workmen's

[1] *Hansard*, 1889, p. 1497.

[2] *Canadian Manufacturer*, May 26, 1882, p. 194.

compensation and minimum wage laws they have been followed after first being accepted and modified in the United States, the development in Canada has been considerably greater.

Progress in laws for the improvement of working conditions has been accompanied by retrogression in the legal status of trade unions. In their efforts to promote organization and to secure legal recognition the unions were thrown entirely upon their own resources. Here they could not avail themselves of favorable public opinion or the assistance of other organizations. As Coats says of the early unions, "They had none of that encouragement to organization which the English unionists received from the philosophic radicalism of the upper and educated classes of 1825-50." [1] And again, "Even by the liberal statesmen and press of the day, labor unions were considered as perversions, 'mere ebullitions of unfounded discontent whose aims were mischievous where not Utopian.'" [2] The inevitable lag in Canadian trade-union legislation behind that of Great Britain caused dismay among workers so largely of British origin. The printers of Toronto were amazed to find in 1872 that they stood before the law as it was in England in 1792.

With the British Trade Union Act reproduced in Canada by a Conservative Government and the right of peaceful picketing of the Conspiracy and Protection of Property Act of the Old Country, granted in the Liberal regime of Alexander Mackenzie, the prospect of Canada's keeping almost abreast of Great Britain seemed hopeful enough. But the wave of prosperity that followed the triumph of the National Policy in 1879 gave way to the long decline in foreign trade that began in 1884, and in the keener competi-

[1] R. H. Coats, "The Labor Movement in Canada," *Canada and Its Provinces*, vol. ix, p. 292.

[2] *Ibid.*, p. 295.

tion of the time, employers were more than ever impatient of union restraints.

And while considerable numbers of the workers were acquainted with the developments in British labor legislation, the majority of Canadian employers were not. Few of those who came from Great Britain had been employers of labor there. Many of them had grown up on farms in Canada and retained the patriarchal attitude of agriculture towards their employees in factory and shop. "There isn't a manufacturer of us all," declared one of the most successful pioneers in the flourishing agricultural implement industry in 1876, "who hasn't come up from five dollars." [1] The demands of these Old Country unionists seemed revolutionary to such employers. The *Canadian Manufacturer* said of the Knights of Labor in 1883:

> Although it has been in existence a dozen years or more, very little is publicly known of what its objects and modes of operation really are; and there is room for the suspicion that it is in the main a socialist and revolutionary propaganda with considerable opportunities for the leaders to do a good thing for themselves.[2]

At the time of the telegraphers' strike in 1883 the *Canadian Manufacturer* referred to "the dangerous character of the organization which assumes to itself the absurd and unsuitable designation of 'Knights of Labor'." The Quebec Board of Trade felt that the decline in the business of the harbor at Quebec was due entirely to the unreasonableness of the Ship Laborers Union and it was stated in Parliament in 1889 that they had ruined the port.

Contending with public apathy and the growing power of the manufacturers the unions lost much of the legal status they had gained. A small verbal change in the Revised Statutes of 1886 marks a turning from British precedent in

[1] *Report of House of Commons Committee on Depression 1876*, quoted by Skelton, *op. cit.*, p. 120.

[2] *Canadian Manufacturer*, Aug. 24, 1883, p. 601.

trade-union legislation. There followed withdrawal of the right of peaceful picketing, an effort to subject the unions to the combines legislation, successful for a time, and refusal to reproduce in Canada the further advances in British legislation.

The injunction, which singularly enough began to be used in the eighties in the United States at the very time Canadian trade unions were losing legal status, was unknown in Canada until after the Taff Vale decision. Then several injunctions were issued by the Canadian courts and the unions were curbed in their use of the strike during the boom of the early years of the century and in war-time prosperity. A court decision given in 1909, at the peak of pre-war employment, held that the omission of the peaceful picketing clause from the Criminal Code in 1892 indicated Parliament's intention not to deprive "watching and besetting" of its wrongful character and in this matter Canadian trade unionism was thrown back to the legal position it held before 1876. While in Great Britain the organizations from which many Canadian unionists came, had their legal rights clarified and confirmed by the Trade Disputes Act of 1906, the unions of their adoption in Canada were receding toward the status of the trade unions of the United States, where the denial of peaceful picketing and the issuance of injunctions have become general. Canadian unionists cannot now say, as did the secretary of the Provincial Workmen's Association reporting in 1897 after a visit to the Pennsylvania coal fields: "There is reason to be thankful that we know nothing of government by injunction." [1]

But the approach to American practice was probably inevitable. Inspired by British trade-union achievements the Canadian unions demanded British standards in these matters and this principle gained some acceptance at first. Sir John A. Macdonald contended in support of the Trade

[1] *Provincial Workmen's Association, op. cit.*, 1897, p. 329.

Unions Act, passed for the relief of the striking Toronto printers in 1872, that British workers in Canada should have the privileges they enjoyed at home. But as the manufacturers grew in consciousness of organized strength their resistance increased, and while the unions have surpassed their United States colleagues in remedial legislation, they have fallen back towards them in legal status. The employers might yield protective legislation but, as in Great Britain and the United States, they were determined to oppose any legal recognition of the coercive methods of the unions to the last. Such demands seemed especially preposterous to employers in the pioneer days of Canadian industry.

This seemingly perverse denial of a legal status accorded in industrially advanced Great Britain aroused a sense of injustice among trade unionists. It may or may not be significant that the general strike of 1919, the greatest labor upheaval in Canadian history, centered in Winnipeg in a pioneer portion of a pioneer industrialism, where the injunction and the damage suit had been much used. Indeed, the metal tradesmen, with whom the dispute originated, lost a strike shortly before through the issuance of an injunction and an action for damages, and after this defeat their request, endorsed by the Winnipeg Trades Council and the president of the Trades and Labor Congress, for the restoration of picketing to its legal status of 1876 and other privileges of the British Trade Disputes Act was denied.

The desired British legal status is probably some distance in the future for Canadian unionists. That "kind of benefit of clergy" granted by the Industrial Disputes Act came through much educational effort and the election of an unprecedented number of labor candidates in the general election of 1906. The further fruition of the same policy brought the Trade Union Act of 1913. The public of Canada has yet to be educated on the functions of trade unions in the government of modern industry and Canadian labor has only two representatives in the House of Commons.

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## TABLE OF CASES CITED

### Canadian Cases


PAGE

Aliens, *In re* Employment of, 63 Can. S. C. R. 293 (1922) .... 60, 394-95
Attorney-General for Canada *v.* Attorney-General for Alberta, [1916] 1 A. C. 588 ..... 53
Attorney-General for Ontario *v.* Hamilton Street Railway Company, C. R. [13] A. C. 201 (1903) ..... 280, 281, 286
Attorney-General for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328 54
Att'y Gen'l of British Columbia *v.* Att'y Gen'l of Canada *et al.*, [1923] 4 D. L. R. 698 ..... 395
Board of Commerce Act, 1919, and the Combines and Fair Prices Act, 1919, *In re*, [1922] 1 A. C. 191 ..... 51, 54, 187-88
Brauch *v.* Roth, 10 O. L. R. 284 (1904) ..... 140-41
Brooks-Bidlake and Whittall Ltd. *v.* Attorney-General of British Columbia, [1923] 2 D. L. R. 189 ..... 395-96
Centre Star Mining Company, Limited *v.* Rossland Miners Union *et al.*, 9 B. C. R. 531 (1903) ..... 140
Citizens Insurance Company of Canada *v.* Parsons. Queen Insurance Company *v.* Parsons, 7 App. Cas. 96 (1881) ..... 52
City of Montreal *v.* Montreal Street Railway, [1912] A. C. 333 ..... 51
Coal Mines Regulation Act and Amendment Act, 1903, *In re*, 10 B. C. R. 408 (1904) ..... 399
Coal Mines Regulation Amendment Act, 1890, *In re*, 5 B. C. R. 306 (1896) ..... 397
Cotter *v.* Osborne *et al.*, C. R. [1911] A. C. 137 ..... 143-44
Fort Frances Pulp and Power Co. *v.* Manitoba Free Press Co., [1923] A. C. 695 ..... 51
Graham *v.* Knott *et al.*, 14 B. C. R. 97 (1908) ..... 143
Hodge *v.* The Queen, 9 App. Cas. 117 (1883) ..... 52
Hours of Labour, *In re* Legislative Jurisdiction over, [1925] Can. S. C. R. 505 ..... 57-58
Hudson's Bay Company, Limited, and the Minimum Wage Act, *In re*, [1924] 3 W. W. R. 177 ..... 218
John Deere Plow Company, Limited *v.* Wharton, [1915] A. C. 330 .. 53
Kelly *v.* City of Winnipeg, 12 M. R. 87 (1898) ..... 212
Krug Furniture Company *v.* Berlin Union of Amalgamated Woodworkers, 5 O. L. R. 463 (1903) ..... 140
Lefebvre *v.* Knott, 13 Can. Cr. Cas. 223 (1907) ..... 183
Le Roi Mining Company, Limited *v.* Rossland Miners Union, No. 38,

PAGE

Western Federation of Miners *et al.*, 8 B. C. R. 370 (1901) ... 139-40
Local Union No. 1562, United Mine Workers of America, *v.* Williams and Rees, 59 Can. S. C. R. 240 (1919) ..... 175
Lord's Day Alliance of Canada *v.* Attorney-General for Manitoba and Attorney-General for Canada, [1925] A. C. 384 ..... 283
Metallic Roofing Company of Canada, Limited *v.* Jose, C. R. [1909] A. C. 1 ..... 142, 143, 175
Queen, The, *v.* Halifax Electric Tramway Co., 30 N. S. R. 469 (1897) ..... 276-77
Queen, The, *v.* Robertson, 6 Can. S. C. R. 52 (1882) ..... 58
Quong Wing *v.* The King, 18 D. L. R. 121 (1914) ..... 406
Regina *v.* Little, 6 B. C. R. 78 (1897) ..... 397
Regina *v.* Wing Chong, 1 B. C. R., pt. ii, 150 (1885) ..... 391
Rex *v.* McGuire, 16 O. L. R. 522 (1908) ..... 171
Rex *v.* Russell, [1920] 1 W. W. R. 624 ..... 153-54, 156, 166-67
Robinson *v.* Adams, 56 O. L. R. 217 (1924) ..... 163-65
Rother *v.* International Ladies Garment Workers Union *et al.*, 60 C. S. 105 (1921) ..... 161
Russell *v.* Amalgamated Society of Carpenters and Joiners, [1912] A. C. 421 ..... 177
Russell *v.* The Queen, 7 App. Cas. 829 (1882) ..... 50
Starr *v.* Chase *et al.*, [1924] 4 D. L. R. 55 ..... 176-78
Tai Sing *v.* Maguire, 1 B. C. R., pt. 1, 101 (1878) ..... 391
Toronto Electric Com'rs *v.* Snider *et al.*, [1925] 2 D. L. R. 5 (Industrial Disputes Investigation Act case) .. 50, 51, 52, 53-55, 59, 171
Union Colliery Company of British Columbia *v.* Bryden, [1899] A. C. 580 ..... 397
Vulcan Iron Works *v.* Winnipeg Lodge No. 174, 21 Man. R. 473 (1911) ..... 144-45, 146
Yee Clun *v.* City of Regina, [1925] 3 W. W. R. 714 ..... 406-7

### British Cases

Giblan *v.* National Amalgamated Labourers' Union of Great Britain and Ireland, [1903] 2 K. B. 600 ..... 167
Lyons *v.* Wilkins, [1896] 1 Ch. D. 811 ..... 167
Quinn *v.* Leathem, [1901] A. C. 495 ..... 167
Taff Vale Railway *v.* Amalgamated Society of Railway Servants, 70 L. J. K. B. 905 (1901) ..... 137

### United States Cases

American Steel Foundries *v.* Tri-City Central Trades Council, 257 U. S. 184 (1921) ..... 165, 193
Truax *v.* Corrigan, 42 S. C. 124 (1921) ..... 165, 191

# INDEX


Aberdeen, Lady, 438
Agricultural workers: right of association, convention, 26, action on convention by Canada, 43, Nova Scotia, 43, Saskatchewan, 43; living-in-conditions, recommendation, 27; maternity protection, recommendation, 27; social insurance, recommendation, 27, no action on recommendation, 43; technical education, recommendation, 27, legislation bearing on, 44, action on recommendation by Canada, 44, Nova Scotia, 44, Saskatchewan, 44; unemployment, recommendation, 27, action on recommendation by Nova Scotia, 44, Saskatchewan, 44
Alberta. *See* Alien workers, Child labor, Enforcement labor laws, Fair wages, Hours of work, Minimum wage, Rest days
Alien Labor Act, 91
Alien languages, use of fourteen prohibited, 151
Alien organizations, declared unlawful, 152
Alien workers, equitable treatment of, 389-410, 475; Labor Section on, 20; recommendation, 23, no action on recommendation, 41
——, workmen's compensation for accidents; convention, 32, 33; recommendation, 32, 33-34; legislation bearing on, 45
——, exclusion from employment on public works: British Columbia, 392-96
——, exclusion from employment on railways: Hon. Alexander Mackenzie on, 390; in British Columbia, 396; Ontario, 396
——, exclusion from employment in mines: British Columbia, 396-400; Northwest Territories, 400-401; Saskatchewan, 401; summary, 409
——, differential treatment in workmen's compensation: Alberta, 404-5; British Columbia, 405; Manitoba, 402-3; New Brunswick, 401; Nova Scotia, 403; Ontario, 404; Quebec, 402; Yukon, 404
——, prohibition employment white women by Orientals: British Columbia, 408; Manitoba, 407; Ontario, 407; Saskatchewan, 405-7; summary, 410
American Federation of Labor, 481
Amusement places, child labor in, 343-53
Anthrax: recommendation, 24; action on recommendation by Canada, 40
Anti-loafing order, 105
Arbitration, 86, 95
Association, freedom of: Labor Section on, 20; for agricultural workers, 26, 43; the employed, 116-79; employers, 178-89; public employees, 172
Association, unlawful: 1919 law on, 152

Bakeshops: hours, 249-61; night work, convention on, 32, 33; rest days, 294-95
Barber shops: hours, Saskatchewan, 257; rest days, 294-95
Barrooms, child labor in, 354-55
Berne Convention: recommendation, 24; action on recommendation, Canada, 40-41
Blacklisting, 181
Blake, Hon. Edward, 69, 127, 129, 131
Board of Commerce, established, 186; legal decision on, 51-52, 54; act repealed, 188

Borden, Sir Robert, 19, 47
Bourinot, J. G., 60
British Columbia. *See* Alien workers, Child labor, Chinese, Commission on Labor, Enforcement labor laws, Fair wages, Hours of work, Minimum wage, Rest days, Women workers
British North America Act, 47-65
Brown, George, 67

Canada, Dominion of. *See* Agricultural workers, Anthrax, Berne Convention, Child labor, Commission on Industrial Relations, Commission on Relations of Labor and Capital, Enforcement labor laws, Fair wages, Hours of work, Rest days, Sweating, Trade Unions Act, Unemployment
Canada, Province of, law on conspiracy, 119-20
Canadian Bar Association, 63
*Canadian Congress Journal*, 72, 111
Canadian Federation of Labor, 99, 142
Canadian Labor Union, 68, 69, 70, 91
*Canadian Manufacturer*: on labor legislation, 80-81; sweating, 87; conviction bricklayers for conspiracy in 1889, 132; Dominion factories act, 482; Knights of Labor, 484-85
Canadian Manufacturers' Association: on alien labor, 91; eight-hour day, 96, 234-236, 239, 246; opposes conventions, 111; on combines legislation, 184-85, 187; minimum wage, 197-98; Alberta factory act, 248; Lord's Day Act, 271-72; factories inspection in Ontario, 434
Cartwright, Sir Richard, 80
Catholic unions, National: beginnings of, 99; on incorporation of trade unions, 178
Chauffeurs, hours of work, Ontario, 264
Child labor, 302-85, 474-75: Labor Section on, 20; in agriculture, convention, 25-26, action on convention by Nova Scotia, 43, Saskatchewan, 43; recommendation on night work in agriculture, 26, protection against lead poisoning, recommendation, 23, no action on, 41; protection against white lead in painting, convention, 26, no action on, 43; reported on by commissions, 78, 79; committee of Ontario Legislature on, 318, 435
——, industrial undertakings: convention on age admission, 22; action on, British Columbia, 38, 39; Manitoba, 39; Nova Scotia, 39; Saskatchewan, 39; convention on night work in, 22; action on, British Columbia, 355-56
——, at sea: convention on age admission, 24, 25; action on, 42; convention on medical examination, 25; action on, Canada, 42, 356
——, mines, 303-12: Alberta, 311-12; British Columbia, 305-7; Northwest Territories, 310; Nova Scotia, 303-5; Ontario, 308-9; Quebec, 309-10; Saskatchewan, 312; Yukon, 310-11
——, factories, 312-38: Alberta, 337-38; British Columbia, 334-35; Manitoba, 329-31; New Brunswick, 333-34; Nova Scotia, 331-33; Ontario, 312-21; Quebec, 322-29; Saskatchewan, 336-37
——, shops, 338-43: Alberta, 343; British Columbia, 342-43; Manitoba, 340-41; Ontario, 338-40; Nova Scotia, 342
——, street trades, 343-53: Alberta, 350-52; British Columbia, 353; Manitoba, 345-48; New Brunswick, 353; Nova Scotia, 353; Ontario, 343-45; Quebec, 352; Saskatchewan, 348-50
——, barrooms and breweries, 354-55: Alberta, 354; Manitoba, 355; New Brunswick, 355; Northwest Territories, 354; Nova Scotia, 354; Quebec, 354; Saskatchewan, 355; Yukon, 354
——, school attendance regulations, 356-75: Alberta, 371-72; British Columbia, 359-60; Manitoba, 373-75; New Brunswick, 367-68; Northwest Territories, 365-66; Nova Scotia, 362-65; Ontario, 356-59; Prince Edward Island,

360-61; Quebec, 375; Saskatchewan, 369-71; Yukon, 366
Chinese: taxation of, British Columbia, 390-91; immigration to British Columbia, 391-92; other laws against, British Columbia, 392. *See also* Alien workers
Clayton Act, 113, 114-15, 165, 191
Coal-miners, minimum wage for, in British Columbia, 223
Coats, R. H., 66, 139, 483
Combination Act, of Nova Scotia: 1816, 116-17; 1864, 118
Combinations, trade, select committee on, 83. *See also* Combines
Combines and Fair Prices Act: 186, repealed, 188
Combines Investigation Act: of 1910, 185; repealed, 186; 1923, 188
Combines legislation: of 1889, 133, 182; amendments, 183; clause in customs tariff, 183-84; exclusion of unions from, 472
Commission on Chinese and Japanese immigration, 94
——, eight-hour day, Nova Scotia, 235-36, 238
——, Industrial Relations, 1919: on principles Labor Section, 11; recommends National Industrial Conference, 63, report of, 108; on employers' organizations, 181; favors minimum wage, 196-7; on eight-hour day, 231
——, Labor, British Columbia: on Asiatics, 408; enforcement factory act, 444; scaffolding inspectors, 455; government regulation of camps, 463; electrical inspection, 464
——, Relations of Labor and Capital in Canada, 1889: favors Dominion factory act, 48-49, 50; on child labor, 79-80, 303; causes amendment Quebec factory act, 323; on inspection and overloading vessels, 458-60
——, to enquire into mills and factories, on child labor, 78, 357
——, to enquire into sweating system: favors Dominion factory act, 50; on home work, 87; on Ontario and Quebec factory acts, 433
Commodity, labor as: Labor Section on, 20
Commons and Andrews: conspiracy in United Staes, 190-91; Clayton Act, 191; minimum wage in United States, 230
Conciliation, 86, 95
Conspiracy, 70, 116-65, 189-94
Conspiracy and Protection of Property Act (British), 126, 127, 129, 192
Contract, breach of: law of 1877, 129-30
Conventions. *See* International Labor Conference
Criminal Code, amendments proposed by Trades and Labor Congress, 141, 157-58
Criminal Law Amendment Act, 1872: terms of, 124; report of House of Commons committee on, 126; amendments of 1875 and 1876, 127-28
Crothers, Hon. T. W., 94

Damage suits, 116-65, 139, 140, 193-94

Eight-hour day. *See* Hours of work
Emigration. *See* Immigration and emigration
Employers' Association: Toronto, 179-80, Manitoba, 180
Employers' associations: Industrial Relations Commission on, 181; restrictions on, 181-82
Employment agencies: private forbidden, 100; public established, 101
Employment Offices Coordination Act, 39, 42, 101
Employment Service Council of Canada, 40, 63, 101
Employment Service of Canada, 39, 101
Enforcement labor laws, 411-471, 475-76: Labor Section on, 20; women's part in, 413
——, mines, 414-29, 467, 468: Alberta, 428-29; British Columbia, 418-23; Manitoba, 427; Northwest Territories, 427; Nova Scotia, 414-18; Ontario, 423-25; Quebec, 426-7; Saskatchewan, 429; Yukon, 428

——, factories, 430-47, 467-69: recommendations on, 23-24, 27-32; action on, 45, 471: Alberta, 446-47; British Columbia, 443-45; Manitoba, 439-41; New Brunswick, 442-43; Nova Scotia, 441-42; Ontario, 430-36; Quebec, 436-39; Saskatchewan, 445-46
——, stores, workshops and bakeshops, 447-52, 469: Alberta, 452; British Columbia, 450-51; Manitoba, 449-50; New Brunswick, 452; Nova Scotia, 451; Ontario, 447-49; Quebec, 450; Saskatchewan, 452
——, building construction, 452-55, 469: Alberta, 455; British Columbia, 455; Manitoba, 452-53; Ontario, 454-55; Quebec, 453-54; Saskatchewan, 455
——, shipping: Canada, 456-60, 470
——, construction works, 460-63, 470; Canada, 460-61; British Columbia, 462-63; Manitoba, 463; New Brunswick, 463; Nova Scotia, 463; Ontario, 461; Quebec, 462; Saskatchewan, 462
——, electrical construction, 463-66, 470: Alberta, 465; British Columbia, 463-64; Manitoba, 466; Nova Scotia, 466; Ontario, 465; Saskatchewan, 465
——, explosives, 466-67: Canada, 466; Alberta, 466; British Columbia, 466; Manitoba, 467; New Brunswick, 467; Nova Scotia, 467; Ontario, 467; Quebec, 467; Saskatchewan, 467; Yukon, 467
Equal pay, 386-88; Labor Section on, 20; no legal recognition, 475; War Labor policy on, 387

Factories. *See* Child Labor, Enforcement labor laws, Hours of Work, Rest days
Factory legislation: proposed Dominion acts, 48-49, 50, 81; proposed Ontario act, 48
Fair wage on government contracts, 195-215, 229, 472-73; Labor Section on, 20; origin in Great Britain, 195; Trades and Labor Congress on 196, 199, 201, 202, 203; Dominion legislation, 199-207; Alberta, 214; British Columbia, 208-9; Manitoba, 212-13; New Brunswick, 214-15; Nova Scotia, 214; Ontario, 209-11; Quebec, 215; Saskatchewan, 211-12; Yukon, 215
Fire departments: hours, 264; rest days, 297-98
Fishing industry: recommendation on hours, 24-25, 42; Dominion jurisdiction over, 47, 58
Foreign workers. *See* Alien workers

Great Britain. *See* Conspiracy and Protection of Property Act, Fair wages, Molestation of Workmen Act, Trade Disputes Act, Trade Union Act
General strike, Winnipeg, 106, 153, 486-87

Health services, 41-42
Holidays. *See* Rest days
Hotels and restaurants: hours, 263-64; rest days, 295-96
Hours of work, 231-67, 473
——, factories: Alberta, 248-49
——, laundries: British Columbia, 249
——, shops and bakeshops, 249-61: Alberta, 259-61; British Columbia, 256-57; Manitoba, 251-52; New Brunswick, 258-59; Northwest Territories, 253-54; Nova Scotia, 254-55; Ontario, 249-51; Quebec, 252-53; Saskatchewan, 257-58
——, railways and street railways: Canada, 261; Nova Scotia, 262-63; Ontario, 261-62
——, public works: Manitoba, 263
——, hotels: Quebec, 263-64
——, fire departments: Alberta, 264; British Columbia, 264; Ontario, 264
——, chauffeurs: Ontario, 264
Hours of work, eight-hour day: Labor Section on, 20; jurisdiction in legislation, 56, 57-58; on Dominion work, 96, 233; considered in Parliament, 233-39; proposed in Ontario, 236, 237
——, inland navigation: recommendation, 24, no action, 42

——, fishing industry: recommendation, 24-25, no action, 42
——, industrial undertakings: convention, 21-22; British Columbia, 36, 239-40; Ontario, 36-37
——, mines and smelters; Alberta, 245; British Columbia, 240-44; Northwest Territories, 244-45; Nova Scotia, 247; Ontario, 245-47; Yukon, 247
——, public works: Yukon, 263

Immigration: Trades and Labor Congress on Oriental, 85, 89; Italian to Montreal, 92. *See also* Chinese immigration
Immigration and emigration: recommendation on, 27; legislation bearing on, 45
*Industrial Canada. See* Canadian Manufacturers' Association
Industrial Conditions Act, Manitoba, 109, 151
Industrial disputes, arbitration and conciliation in, 86, 95
Industrial Disputes Investigation Act: enactment, 95; restriction of right to strike, 168, 171; amendment of 1918, 168; amendment of 1920, 169; legal decision, 51, 52, 53-55, 59, 171; amendment of 1925, 55-56, 171; Trades and Labor Congress on, 170-71
Industrial undertakings. *See* Child labor, Hours of work
Industrial Workers of the World, 105
Injunctions in labor disputes: after Taff Vale decision, 139-40, 143, 144, 145; during the war, 106, 147; labor opposes, 148, 150; after the war, 160-61, 163-64; failure Manitoba anti-injunction bill, 161; Middleton on, 164; use of summarized, 485-86
Inland navigation: recommendation on hours, 24, 42; Dominion jurisdiction over, 47, 58
Inspection. *See* Enforcement labor laws
International Labor Conference: provision for in Peace Treaty, 13, 15; first conference, 21-24; second, 24-25; third, 25-27; fourth, 27; fifth, 27-32; sixth, 32-33; seventh, 33-34
——, conventions and recommendations: provision for in Peace Treaty, 15-17; members' responsibility, 16-17, 34-35; Canada's responsibility, 35, 61; action on in Canada, 34-46, 476-77; difficulties of action, 477-79. *See also* Agricultural workers, Alien workers, Anthrax, Association, freedom of, Bakeshops, Berne Convention, Child labor, Enforcement labor laws, Hours of work, Rest days, Seamen, Unemployment, Workmen's compensation, Women workers
International Labor Office, 13
International Labor Organization: governing body, 14; Canada's representation, 46
Intimidation: law enacted, 1869, 120-21; amended, 1887, 132-33; Senate on, 139

Japanese: laws against, British Columbia, 392. *See also* Alien workers, Immigration
Japanese Treaty Act, 395
Jurisdiction, Dominion and provincial, 47-65, 478

King, W. L. Mackenzie: quoted, 66; investigates fraudulent practices in immigration, 92; investigates government clothing contracts, 94; on Combines Investigation Act, 188; interest in fair-wage principle, 204; chairman committee on eight-hour bill, 235
Knights of Labor: appear in Canada, 72; constitution, 72-74; relations with Trades and Labor Congress, 74; relations with Provincial Workmen's Association, 97; reorganized, 99

Labor legislation: interprovincial conferences, 35, 64; Dominion and provincial powers in, 47-65, 478; approach to American practice, 486; uniformity in Dominion and provincial laws, 63; due mainly to certain organizations, 479; development summarized,

479-81; British influence on, 481, 486; faith of Canadian unions in, 481; objectives of unions, 481-82; compared with United States, 483; employers' attitude on, 484-85
Labor Party: Trades and Labor Congress declines to lead, 480-81; endorses Canadian Labor Party, 480
Labor Section: quoted, 12, 19, 34; methods and principles, 19-20; Canada's obligation under, 56, 57; Canada's position on summarized, 472-76
Laundries. *See* Hours of work
Laurier, Sir Wilfrid, 93
Lead poisoning, protection against. *See* Child labor, Women workers
League of Nations, Covenant of, 11
Lescohier, Don D., 66
Lockouts, legal decision on, 183
Locomotive Engineers, International Brotherhood of, held in restraint of trade, 176-78
Lord's Day Alliance, 95, 270, 283, 482
Lord's Day Act, 43, 270-71, 272-75, 279-80, 298-99, 473
Lord's Day, committee on bill respecting, 270-271

Macdonald, Sir John A., 67, 68, 486
Mackenzie, Hon. Alexander, 69, 70, 390
MacMillan, J. W., 61
Male Minimum Wage Act, British Columbia, 197, 223
Manitoba. *See* Alien workers, Child labor, Enforcement labor laws, Fair Wages, Hours of work, Industrial Conditions Act, Injunctions, Minimum Wage, Rest days, Women workers
Master and Servant Acts, 68
Maternity protection. *See* Women workers
Meighen, Hon. Arthur, 158
Mines. *See* Alien workers, Child labor, Enforcement labor laws, Hours of work, Rest days
Minimum wage, 216-30, 473: Labor Section on, 20; enactment provincial laws, 100; origin of, 196; Trades and Labor Congress on, 196; Industrial Relations Commission on, 196-97
——, legislation: Alberta, 197, 216-19; Canadian Manufacturers' Association on, 197-98; British Columbia, 220-24; Manitoba, 219-20; Nova Scotia, 226-28; Ontario, 228-29; Quebec, 225-26; Saskatchewan, 224-25
Molestation, 69
Molestation of Workmen Act (British), 124, 189
Moore, Tom: elected to governing body, International Labor Organization, 112; president Trades and Labor Congress, 151; protests restriction on right to strike, 170
Mulock, Sir William, 84

National Council Women, 482
National Industrial Conference, 63, 108-9
National Policy, and labor legislation, 81
National Trades and Labor Congress, 99
New Brunswick. *See* Alien workers, Child labor, Enforcement labor laws, Fair wages, Hours of work, Rest days
Night work. *See* Bakeshops, Child labor, Women workers
Nine Hours League, 67
Nine Hours Movement, 232
Northwest Territories. *See* Alien workers, Child labor, Enforcement labor laws, Hours of work, Rest days
Nova Scotia: regulation of wages in 1777, 116-17. *See also* Agricultural workers, Alien workers, Child labor, Combination acts, Commission on eight-hour day, Enforcement labor laws, Fair wages, Hours of work, Minimum wage, Rest days, Unemployment, Wages, Women workers
Nuisance, common: sections in Criminal Code, 134-35; J. G. O'Donoghue on, 157

O'Donoghue, D. J., 89, 232
O'Donoghue, J. G., 89, 148, 154-157, 165, 166, 199
Old-age pensions, Trades and Labor Congress favors, 112
One Big Union, 106

Ontario. *See* Alien workers, Child labor, Enforcement labor laws, Fair wages, Hours of work, Minimum wage, Rest days
Ontario Bureau of Industries, report quoted, 68, 72
Ontario Manufacturers' Association, favors Dominion factory act, 49
Oriental workers. *See* Alien workers
Orientals. *See* Chinese, Japanese
Ottawa Trades Council, 71

Peace Conference, 12
Peace Treaty. *See* Labor Section
Permanent Court of International Justice, 17-19
Picketing, peaceful, 116-65, 189-94
Prince Edward Island. *See* Child labor, Rest days
Provincial Workmen's Association: establishment and growth, 72, 75, 89; influence on legislation, 75, 88, 91, 97; proceedings quoted, 78; in politics, 78; on eight-hour day, 96; on alien labor, 97; relations with Knights of Labor, 97

Quebec. *See* Alien workers, Child labor laws, Enforcement labor laws, Fair wages, Hours of work, Minimum wage, Rest days
Quebec Ship Laborers Benevolent Association, 82, 83

Railway brotherhoods, 97
Railways. *See* Alien workers, Fair wages, Hours of work, Rest days
Recommendations. *See* International Labor Conference
Reconstruction and Development Committee, 107
Reconstruction period, memorandum of suggestions for, 109
Rest days, 268-301, 473: Labor Section on, 20
——, commercial establishments: recommendation, 26; action, 43
——, industrial undertakings: convention, 26, 32, 33; action on, 43
——, Sunday observance laws, 269-84; Canada, 269-75; Alberta, 284; British Columbia, 281-82; Manitoba, 283-84; New Brunswick, 277-78; Northwest Territories, 284; Nova Scotia, 275-77; Ontario, 280-81; Prince Edward Island, 277; Quebec, 278-81; Saskatchewan, 284; Yukon, 284
——, railway employees, 284-90: Canada, 284-85; Alberta, 289; British Columbia, 290; Manitoba, 287-88; Nova Scotia, 288-89; Ontario, 285-87; Saskatchewan, 290
——, shop employees, 291-94: Alberta, 293; British Columbia, 291-92; Manitoba, 294; New Brunswick, 292-93; Ontario, 294; Saskatchewan, 293
——, bakeshops and barbershops: British Columbia, 295; Ontario, 294-95
——, hotels and restaurants: Ontario, 296; Quebec, 295-96
——, fire departments: Alberta, 297-298; British Columbia, 297; Ontario, 297
Restaurants. *See* Hotels and restaurants
Riddell, Dr. W. A., 46, 62
Robertson, Hon. G. D., 56, 110
Rowntree, B. Seebohm, 78

Saskatchewan. *See* Agricultural workers, Alien workers, Barber shops, Child labor, Enforcement labor laws, Fair wages, Hours of work, Minimum wage, Rest days, Unemployment, Women workers
School attendance regulations, 356-75
Seamen: employment facilities for, convention, 25, action, 42; national seamen's codes, recommendation, 25, no action, 42; unemployment indemnity, convention, 25, action, 42; unemployment insurance, recommendation, 25, no action, 42
Sedition: section on in Criminal Code, 134; worker tried for, 153; Judge Metcalfe on in Winnipeg strike case, 154-55; J. G. O'Donoghue on, 155; attitude of government on, 158
Senate, The, on trade-union legislation, 84, 98, 114, 138, 139, 141

Shearer, Dr. J. G., 270
Sherman Anti-Trust Act, 191
Shiplaborer's union of Quebec, 132
Shipping Federation, British Columbia, 180
Ships. *See* Child labor, Enforcement labor laws
Shops. *See* Child labor, Enforcement labor laws, Hours of work, Rest days
Skelton, O. D.: economic history Canada quoted, 70, 71, 78; investigates eight-hour day, 235
Smelters. *See* Mines
Smith, Ralph, 92, 96, 137, 234
Social Service Council of Canada, 482
Street railways. *See* Railways
Street trades. *See* Child labor
Strike, right to, 165-73
Strike, sympathetic: legal decision on, 154, 166-67; attitude of government on, 160, 167; J. G. O'Donoghue on, 166
Studholme, Allan, 237
Sunday. *See* Rest days
Sweating: Trades and Labor Congress on, 87, 94; Dominion regulations, 94. *See also* Commission to enquire into

Taff Vale decision, 99, 137, 138, 146
Taft, Chief Justice, 191, 193
Technical education: commissions on, 96; act passed, 101
Threats, 69
Tilley, Sir Leonard, 48
Toronto *Globe*: on Nine Hours Movement, 232; on child labor, 315
Toronto Trades Assembly, 67, 70, 74, 77, 89
Toronto Trades and Labor Council. *See* Toronto Trades Assembly
Trade Disputes Act (British), 142, 148, 166, 190
Trade Union Act (British): of 1871, 67, 190, 192; of 1913, 110
Trade Unions Act: terms of, 68, 122; effort to annul section 22, 84; registration feature disregarded, 173
Trades unions, Canadian: early unions, 66, 69, 85, 89; in politics, 71, 77, 78, 110; membership of, 100; contributions to candidates' expenses prohibited, 110; held under English criminal law, 121-22; table of legislation on, 135-36; exempted from combines legislation, 136, 186; damage suits against, 139, 140; hostile action against in Senate, 141-42; incorporation of, 173-79; legal status of, 193. *See also* Canadian Labor Union, Knights of Labor, Ottawa Trades Council, Provincial Workmen's Association, Toronto Trades Assembly, Trades and Labor Congress
Trades and Labor Congress: establishment, 72, 74; favors Dominion factory act, 49; relations with Knights of Labor, 74, 89; influence, 84; exemption from combines legislation, 84, 98, 113-14; opposes immigration, 85, 89, 91, 93, 94; protests against sweating, 87, 94; political attitude, 88; membership, 89; Platform Principles, 89-90, 111; protests against alien contract labor, 92; opposes employment agencies, 93; favors Sunday observance laws, 95, 269-70; favors old-age pensions, 112; seeks definition law on picketing, 136; and provincial legislation legalizing, 137; and Criminal Code amendment on, 141; seeks Dominion law on trade disputes, 148-50; seeks amendments to Criminal Code, 157-58; asks repeal Industrial Disputes Investigation Act, 170; but later seeks extension, 56, 171; change in attitude on incorporation of trade unions, 173-75; seeks legislation against blacklisting, 181; seeks minimum wage, 196; seeks adoption and enforcement fair-wage principle, 196, 199, 201, 202, 203; seeks eight-hour day, 232-33, 237-38; opposes child labor, 303, 321, 324, 328, 339-40; favors equal pay, 386-88, 413; urges women inspectors, 413; praises British Columbia coal-mines legislation, 421; protests administration factory acts in Ontario, 432, 433, and Quebec, 438

Trades and labor councils, 89. *See also* Ottawa, Toronto, Winnipeg Councils

Unemployment: convention, 23; action on by Canada, 39; recommendation, 24, 27; action on by Nova Scotia, 40, 44; Saskatchewan, 40, 44
Unions. *See* Trade unions
United Mine Workers, 97
United States: law of conspiracy, 190-91. *See also* Clayton Act, Labor legislation, Minimum wage, Workmen's compensation
Upper Canada: adopts criminal law of England, 119; act to punish conspiracy, 119-20

Versailles, Treaty of. *See* Labor Section
Verveille, Alphonse, 96, 234, 236
Violence, threats and molestation, 69

Wages, regulation of: Nova Scotia, 116-17. *See also* Fair wages, Minimum wages
War Labor Policy, 101-4, 238
Watters, J. C., 148
Weekly rest. *See* Rest days
White lead in painting: convention, 26; no action, 43
Wilson, Woodrow, inaugural address quoted, 472
Winnipeg Strike, 106, 153, 486-87
Winnipeg Trades and Labor Council, 85-86
Women workers: protection against lead poisoning, recommendation, 23; no action, 41; maternity protection, convention, 24; action by British Columbia, 37, Manitoba, 37-38; night work, convention, 24, and recommendation, 26; action by British Columbia, 38; Nova Scotia, 38; Saskatchewan, 38; protection against white lead in painting, convention, 26; no action, 43; maternity protection for agricultural workers, recommendation, 27. *See also* Enforcement labor laws
Woodsworth, J. S., 110
Workers' spare time: recommendation, 32; legislation bearing on, 45
Workmen's compensation: convention, 34; recommendation, 34; legislation bearing on, 45-46, 480; early provincial legislation, 86; later provincial laws, 100; Dominion law, 64; in United States, 64
Workmen's Compensation Boards, Association of, 63
Works, public. *See* Fair wages, Hours of work, Rest days

Yukon. *See* Alien workers, Child labor, Enforcement labor laws, Fair wages, Hours of work, Rest days